

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-2535 ^{PAS}

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET NO. 74-2535

UNITED STATES OF AMERICA,

APPELLEE,

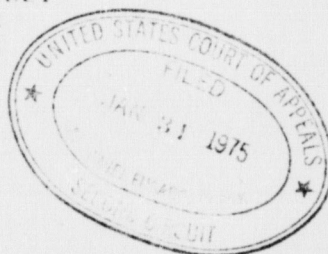
-AGAINST-

SUSAN MOAZEZI,

APPELLANT.

APPENDIX

HERMAN J. GRABER
ATTORNEY FOR APPELLANT MOAZEZI
401 BROADWAY, SUITE 1808
NEW YORK, NEW YORK 10013
(212) 962-1295



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PAGINATION AS IN ORIGINAL COPY

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A. I.

T-4016

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF
NEW YORK.

U.S.A.

vs.

Fusan Maezgi

CASE NO. W.C. 225

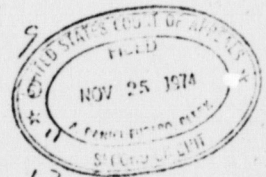
JUDGE Frankel

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14 Cr 223 11/1/11

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A.3.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USA

vs

Susan Mrazgye

CASE NO. 74 Civ 225

JUDGE Frankel

CLERK'S CERTIFICATE.

I, RAYMOND F. BURGHARDT, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the certified copy of docket entries lettered A-D, and the original filed papers numbered 1 thru 32, inclusive, constitute the record on appeal in the above entitled proceeding; except for the following missing documents:

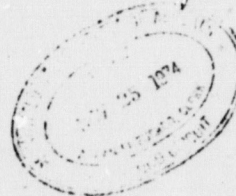
DATE FILED

PROCEEDINGS

None

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 19th day of May, in the year of our Lord, One thousand nine hundred and seventy four, and on the Independence of the United States the 199 year.

Raymond F. Burghardt
Clerk of the Court



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D. C. Form No. 103
CRIMINAL DOCKET

JUDGE FRANKEL

74 Cr. 225

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
SUSAN MOAZEZI- All cts.	Daniel H. Murphy, Jr.
ARMAR MOAZEZI- All Cts.	264-6350
VERONICA HIGHTIE, a/k/a 'Bonnie'-1	
AUGUSTO TRUJILLO-MOYOS-1	
	For Defendant:
	A. MOAZEZI-Harold F. McGraw, Jr.
	205 Park Ave. N.Y.C.

(07) ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine,					
Clerk,					
Marshal, 2 + 3 1/2					
Attorney,					
Prosecution Clerk T. 21					
Importation Cons. to import Cocaine, Heroin & Marijuana into the U.S. 21:8468961 (Cr. 1)					
Distr. & possess. w/intent to distr. Cocaine, II. (Cr. 2);					
Heroin, I (Cr. 3) 21:8412, 8413 (a) (1), (b).					
Distr. & possess. w. intent to distr. Marijuana (Cr. 4)					

DATE	PROCEEDINGS
3-6-74	Filed indictment. (Superseding 74 Cr. 22 and assigned to Judge Frankel.
3-19-74	A. MOAZEZI - Atty. present.. Pleads not guilty, bail set at \$100,000 P.R.B. Co-signed by deft and wife also signed by depts in laws secured by bank pass books and bonds.
	A. MOAZEZI - Atty. present.. Pleads not guilty, bail as previously set in 74 Cr. 87 Cont'd.
	V. HIGHTIE - Atty. present.. Pleads not guilty, bail as previously set in 74 Cr. 87 Cont'd.
	B/W ordered as to TRUJILLO-MOYOS 3 weeks for motion....Frankel, J.
3-19-74	AUGUSTO TRUJILLO-MOYOS - bench warrant issued
3-20-74	A. MOAZEZI - Filed P.R.B. in amount of \$100,000. secured by bank pass book and bonds....

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A.5.

7th Cr. 235225

.2.

Frankel, J.

DATE	PROCEEDINGS
3-21-74	ANBAR, MOAZEZI - Filed order extending bail limits.....Frankel, J.
4-15-74	VERONICA HIGHITE - Filed affdvt. & notice of motion for discovery & inspection, for bill of particulars and for a severance.....
5-7-74	V. HIGHITE - filed memo endorsed on motion of 4-15-74....The matters to which the Govt. consents embrace substantially all of the things to which this movant is entitled.***In all other respects***This motion is denied....Frankel, J....Mailed notice
5-7-74	MOAZEZI - Filed memo endorsed on motion filed 4-15-74 ***The matters to which the Govt. consents embrace substantially all of the things to which this movant is entitled.***In all other respects***this motion is denied....Frankel, J.
5-7-74	Filed affdvt. of D.H. Murphy, II in response to pre-trial motions.
5-7-74	MOAZEZI - Filed memo endorsed on motion filed 4-15-74 to suppress. This motion is frivolous***Motion denied. So ordered....Frankel, J. r/n Filed memo endorsed on motion filed 4-15-74 for severance. Motion denied but subject to renewal at trial. So ordered...Frankel, J. W/n
5-31-74	S. MOAZEZI) Filed affirmation & notice of motion for an order granting reconsideration A. MOAZEZI) by court of its denial of a motion to suppress...Ret. 6-3-74.
5-31-74	JEFF S. MOAZEZI) Filed memorandum of law in support of above motion. A. MOAZEZI)
6-7-74	ANBAR MOAZEZI - Filed order that ONE HUNDRED THOUSAND DOLLAR F.B.I. be annexed, & pre-existing bond condition shall continue in full force and effect.....Frankel, J.
6-11-74	Filed affdvt. of Daniel H. Murphy, II AUSA IN response to affdvt.'s in support of ret' to suppress.
6-12-74	Filed affdvt. of D.H. Murphy, II AUSA in support of a writ.
6-19-74	S. MOAZEZI & A. MOAZEZI - Filed reply to Govt's affdvt. in opposition to motion to

(CONT'D. on Page 3)

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A. 6.

74 Cr. 225

.3.

DATE	PROCEEDINGS
6-24-74	S. MOAZEZI) Filed memorandum...As reflected in a reply affidavit, deft's all A. MOAZEZI) such agreed that the informant was a co-conspirator. It is further stated that the hearing should be postponed until the completion of that evidence hearing. Frankel, J....notice given to U.S. Atty...no address for deft's counsel...
Jul 16-74	Filed Affidavit of T. Gordon Reilly, Asst. U.S. Atty. for a writ of Habeas Corpus and Testificandum, etc. as indicated.
July 22-74	Hearing held to suppress evidence...MOTION DENIED. Trial set for Aug. 19-74 Deft Hoyos covered from trial....Frankel, J.
8-5-74	Filed affdvt. of T. Gordon Reilly, AUSA in support of a writ for J.S. Scanlon...
8-19-74	S. MOAZEZI) A. MOAZEZI) JURY TRIAL BEGUN....Frankel, J. V. HIGHITE)
8-20-74	Trial cont'd.
8-21-74	Trial cont'd.
8-22-74	Trial cont'd.
8-23-74	Trial cont'd.
8-24-74	Trial cont'd.
8-26-74	Trial cont'd.
8-27-74	Trial cont'd. & concluded...SUSAN MOAZEZI Guilty on Cts. 1, 2 & 4 and not guilty ct. 3. Deft ANBAR MOAZEZI and VERONICA HIGHITE NOT GUILTY as charged. S. MOAZEZI bail is cont'd pending sentence. P.S.I. ordered that sentence is adjd to 10-6-74 at 9:45 a.m. Sentenced to 10 years imprisonment. Frankel, J.
8-27-74	Filed transcript of record of proceedings, dated 8-27-74
8-30-74	Filed deft's request to charge
8-30-74	Filed A. Monzevi supplemental requests to charge
8-30-74	Filed Govt's request to charge
8-30-74	Filed Govt's memorandum in opposition to motion to suppress
8-30-74	Filed affdvt. of S. Monzevi in support of motion to suppress
8-30-74	Filed affdvt. of A. Monzevi in support of motion to suppress
8-30-74	Filed affdvt. of J. Charles dated 8-4-74.

(Cont'd. on page 4)

Frankel, J.

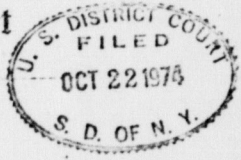
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A 8

United States District Court

FOR THE
SOUTHERN DISTRICT OF NEW YORK



United States of America

v.

No. 74 CR 225

RUSAN KOAZEJI

On this 22nd day of October, 1974, came the attorney for the government and the defendant appeared in person and by Herman Graber, Esq.

her
IT IS ADJUDGED that the defendant upon her plea of not guilty, and a verdict of guilty

has been convicted of the offense of unlawfully, intentionally and knowingly combining, confederating and agreeing with others to violate Section 812, (2)(a), 960(b)(1), 960(b)(2), 841(a)(1), 841(b)(1)(A) and 841(b)(1)(B) of Title 21, U.S. Code. It was part of said conspiracy that the said defendant unlawfully, intentionally and knowingly imported into the United States Schedule I and II narcotic and non-narcotic drug controlled substances in violation of Section 812, 852(a), 960(a)(1), 960(b)(1) and 960(b)(2) of Title 21, U.S. Code. Unlawfully, intentionally and knowingly possessing with intent to distribute a Schedule I and II narcotic drug controlled substance. (Title 21, U.S. Code, Section 812, 841(a)(1), 841(b)(1)(A) and 841(b)(1)(B)),

as charged in counts 1, 2, and 4,
and the court having asked the defendant whether she has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THREE (3) YEARS on count 1. Pursuant to the provisions of Title 21, Section 841, U.S. Code, the defendant is placed on Special Parole for a period of TWO (2) YEARS to commence upon expiration of confinement. Imposition of sentence as to counts 2 and 4 suspended. Defendant is placed on probation for a period of TWO (2) YEARS, subject to the existing probation order of this Court.

Defendant is continued on present bail until October 4, 1974, at 10:30 a.m., at which time she is to appear at the U.S. Marshal's room 504.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Harvin E. Frankel
HARVIN E. FRANKEL

THE COURT recommends commitment to

United States District Judge
RAYMOND F. BURGHART

28

Report "by [name of counsel, counsel] or without counsel: the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant answered that he did not desire counsel. (1) "guilty" and the court found the defendant guilty. (2) "not guilty, and a verdict of guilty." (3) "not guilty, and a verdict of not guilty." (4) "not guilty, and a verdict of not guilty, and a commitment to the custody of the Attorney General or his authorized representative for imprisonment for a period of THREE (3) YEARS on count 1. Pursuant to the provisions of Title 21, Section 841, U.S. Code, the defendant is placed on Special Parole for a period of TWO (2) YEARS to commence upon expiration of confinement. Imposition of sentence as to counts 2 and 4 suspended. Defendant is placed on probation for a period of TWO (2) YEARS, subject to the existing probation order of this Court."

A-9

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v -

JOHN J. GARRITY, JR.
JOHN J. GARRITY, JR.
JOHN J. GARRITY, JR.

74 Cr. 87

Indictment.

The Grand Jury charges:

1. From or about the 1st day of November, 1972, and continuously thereafter to and including the date of the filing of this Indictment, in the Southern District of New York, JOHN J. GARRITY, JR., JOHN J. GARRITY and JOHN J. GARRITY, JR., the defendants, and JOHN J. GARRITY, JR. as a co-conspirator and was as a defendant and as an agent of the Grand Jury known and well known, well known, well known and being inly combined, conspired, confederated and joined together and with each other to violate Sections 812, 841(c)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants and co-conspirator unlawfully, willfully and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(c)(1) and 841(b)(1)(A) of Title 21, United States Code.

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USA-338-538 - p.2 - IND./INT. (Conspiracy to distribute and possess with intent to distribute narcotic drug.)
Ed. 5/1/71

DELETED

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about December 12, 1972, defendant ACCAR MARZEEI, SUHAN MARZEEI, JANE DOE, a/k/a "Bonney" and co-conspirator Jeremiah Scamion met and had a conversation.
2. On or about December 23, 1972, defendant MARZEEI delivered approximately \$4,600 to co-conspirator Jeremiah Scamion.
3. In or about December, 1972, co-conspirator Jeremiah Scamion delivered a package containing approximately 600 grams of cocaine to defendant SUHAN MARZEEI at 315 West 107th Street, New York, New York.

(Title 21, United States Code, Section 846.)

SECOND COUNT

The Grand Jury further Charges:

On or about the 19th day of December, 1972,
in the Southern District of New York,

ACPAR NOAZEZI,
SHERIDAN NOAZEZI, and
JANE DOE, a/k/a "Ronnie",

the defendants, unlawfully, intentionally and knowingly
did distribute and possess with intent to distribute a
Schedule II narcotic drug controlled substance, to wit,
approximately 600 grams of cocaine.

(Title 21, United States Code, Sections 841,
841(a)(1) and 841(b)(1)(A).)

FOREMAN

PAUL J. CORRAN
United States Attorney

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DHM:art
74-0236

A. 10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

740236 225

UNITED STATES OF AMERICA :

-v- :

SUSAN MOZAZZI, ANNA MOZAZZI,
VERONICA HIGHTS, a/k/a "Bonnie",
and AUGUSTO TRUJILLO-BOYOS,

Defendants. :

INDICTMENT
S74 Cr.

The Grand Jury charges:

1. From in or about the early part of October, 1972, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, SUSAN MOZAZZI, ANNA MOZAZZI, VERONICA HIGHTS, a/k/a "Bonnie", and AUGUSTO TRUJILLO-BOYOS, the defendants, together with Jeremiah "Judd" Scanlon, named herein as a co-conspirator but not as a defendant, and others to the Grand Jury known and unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 852(a), 960(a)(1), 960(b)(1), 960(b)(2), 841(a)(1), 841(b)(1)(A) and 841(b)(1)(B) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants and co-conspirators unlawfully, intentionally and knowingly would import into the United States Schedule I and II narcotic and non-narcotic drug controlled substances, the exact amount thereof being to the Grand Jury unknown, in violation of Sections 812, 852(a), 960(a)(1), 960(b)(1)

and 960(b)(2) of Title 21, United States Code.

3. It was further part of said conspiracy that the said defendants and co-conspirators unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic and non-narcotic drug controlled substances, the exact amount thereof being to the Grand Jury unknown, in violation of sections 812, 841(a)(1), 841(b)(1)(A) and 841(b)(1)(B) of Title 21, United States Code.

OVERSIGHT

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about October 29, 1972, defendant SUSAN HDAZIZI purchased approximately nineteen pounds of marijuana from co-conspirator Jeremiah "Judd" Scanlon.

2. On or about December 10, 1972, defendant SUSAN HDAZIZI purchased approximately three-fourths of an ounce of cocaine from co-conspirator Jeremiah "Judd" Scanlon.

3. On or about December 13, 1972, defendants SUSAN HDAZIZI, ARMAN HDAZIZI and VERONICA HIGGINS, a/k/a "Bonnie", and co-conspirator Jeremiah "Judd" Scanlon met and had a conversation.

4. On or about December 13, 1972, defendant SUSAN HDAZIZI delivered approximately \$4,000 to co-conspirator Jeremiah "Judd" Scanlon.

5. On or about December 18, 1972, co-conspirator Jeremiah "Judd" Scanlon, acting as a courier delivered to defendant SUSAN MDAZEZI approximately 600 grams of cocaine which had been obtained by Scanlon from defendant AUGUSTO TRUJILLO-NOYES in Colombia, South America.

6. On or about December 21, 1972, defendants SUSAN MDAZEZI and co-conspirator Jeremiah "Judd" Scanlon met and had a conversation.

7. On or about January 14, 1973, co-conspirator Jeremiah "Judd" Scanlon, acting as courier, delivered to defendant SUSAN MDAZEZI approximately 400 grams of cocaine which had been obtained by Scanlon from defendant AUGUSTO TRUJILLO-NOYES in Colombia, South America.

8. On or about March 24, 1973, co-conspirator Jeremiah "Judd" Scanlon, acting as courier, delivered to defendant SUSAN MDAZEZI approximately 600 grams of cocaine which had been obtained by Scanlon from defendant AUGUSTO TRUJILLO-NOYES in Colombia, South America.

(Title 21, United States Code, Sections 846 and 960).

INDICTMENT

The Grand Jury further charges:

On or about the 10th day of January, 1974, in the Southern District of New York, SUSAN MDAZEZI and ANEAR MDAZEZI, the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately 3.74 grams of cocaine hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(C).)

CHARGE

The Grand Jury further charges:

On or about the 10th day of January, 1974, in the Southern District of New York, SUSAN HAZENI and ANWAR HAZENI, the defendants, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 0.13 gram of heroin hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

CHARGE

The Grand Jury further charges:

On or about the 10th day of January, 1974, in the Southern District of New York, SUSAN HAZENI and ANWAR HAZENI, the defendants, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I controlled substance, to wit, approximately 311.42 grams of marijuana.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

Richard A. Bridge
PROSECUTOR

UNITED STATES ATTORNEY

A II

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

-against-

Indictment No. 74 CR 11

SUGAR MONAZZI, ARNOLD MONAZZI, et al.,

Defendants.

SIR:

PLEASE TAKE NOTICE, that upon the approved duly verified
affirmation of HERMAN I. GRABER, and upon all the proceedings
herein, a motion will be made pursuant to Rule 6(a) and Rule 14
of the Federal Rules of Criminal Procedure, at a Criminal Term of
this Court, at the United States Courthouse, Foley Square on the
day of May, 1974, at 10:00 on that day or as soon thereafter
as counsel can be heard, for an order severing the joinder of
Count 1 from Counts 2, 3, and 4 of the indictment.

Dated: New York, New York
April 13, 1974

Yours, etc.,

SIEGEL & GRABER
Attorneys for Defendants
Office - P.O. Address
401 Broadway, Suite 1604
New York, New York 10013
(212) 952-1295

UNITED STATES OF AMERICA

-vs- JOINT-

AFFIRMATION

SUSAN MOAZEZI, ARBAR MOAZEZI, et al,

Defendants.

BERNARD I. GRABER, ESQ., an attorney duly admitted to practice in the Courts of the State of New York, hereby affirms, under the penalties of perjury, that the following statements are true:

I am the attorney for the defendants SUSAN and ARBAR MOAZEZI.

That the first count of the of the indictment, 74 Cr. 100, charges a conspiracy to violate various sections of Title 21 of the United States Code. There are eight overt acts which are enumerated under the conspiracy count. The last overt act was allegedly occurred on or about March 24, 1973. None of the substantive counts are enumerated as an overt act and the substantive counts allegedly occur almost one year after the most recent overt act in the conspiracy count. Because of the time difference, here, the conspiracy and substantive offenses are not of the same or similar character, nor are they based on the same act or transaction and since they were not included as overt acts of the conspiracy, it cannot be argued that the substantive counts are connected with the conspiracy count as a common source or plan. It is clear also, that since the counts in question are so unrelated there would be no commonality of proof at trial as seems to be required by this Circuit for Rule 8(a) joinder. See U.S. v. Green, 410 F.2d 114 (1971).

It is also to be expected that the Court will find that the inclusion of these unrelated offenses will greatly prejudice the defendants and that the Court should exercise its discretion and sever the offenses. It is respectfully submitted that because the declarations that may be admissible under the conspiracy count will prejudice the defendants in their defense of the initially unrelated substantive counts and conversely, proof of the substantive counts will prejudice the defendants' defense of the conspiracy count. Since these counts are distinct and the evidence to prove the conspiracy count is not the same as that necessary to prove the substantive counts, the prime Government objective of saving expense together, that is saving expense from the duplication of different trials is here not relevant. It is respectfully submitted that the conspiracy count, the first count of the indictment, should be severed from the substantive counts, the 2nd, 3rd, and 4th counts of the indictment.

Herbert L. Grader
HERBERT L. GRADER

U.S. v. [illegible], et al., 74 Cr. 225
Re Motion to Sever

U.S. D. OF N. Y.
[illegible]

Endorsement

Motion denied, but subject to renewal at
trial. So ordered.

Dated: New York, New York
May 6, 1974

Harold E. Frankel
U.S.D.J.

1 14d

2 UNITED STATES OF AMERICA

3 Vs.

74 Cr. 225

4 SUSAN MOAZEZI, AKBAR MOAZEAI,
5 and VERONICA HIGNITE

6 August 26, 1974

7
8 THE COURT: Good morning, ladies and gentlemen.
9 We all appreciate your sharing the mixed blessing of being
10 with us at this relatively early hour in the morning. We
11 come to the ultimate and critical stage of this proceeding,
12 the time when we prepare to give the case to you for your
13 vital responsibility, your effort to seek together to per-
14 ceive the truth about the matters in controversy and to
15 render a just verdict based on your findings as to the
16 truth.

17 You, as all of us have told you repeatedly,
18 are the sole and exclusive judges of the facts. It is your
19 recollection of this evidence that will govern this case;
20 it is for you to determine what inferences should be drawn
21 from the evidence that has been placed before you and to
22 resolve the issues presented by the elements of the dispute
23 as I must define them to you. That kind of definition is
24 the major purpose of instructions to juries, to tell you
25 about, to define for you the rules of law that govern this

1 2Md

2 case, and also to define and discuss with you the rules
3 of procedure that govern your deliberations together.

4 So it is my duty, as I say, to tell you what
5 the law is, not the law that I create, obviously, but the
6 law that comes to all of us from the Congress and from
7 higher courts, and I must give it to you as it comes to me.

8 By the same token, it is your responsibility
9 in the system of law to apply the law as we are all required,
10 to obey it, and not as a matter of personal taste or judg-
11 ment or preference.

12 As to the evidence, the critical matter in any
13 trial, as I told you a week ago, remember what it is, it
14 is testimony and exhibits. Remember again that the things
15 that counsel have said to you are not evidence, the things
16 that I say to you are not evidence; you must not imagine or
17 try to guess whether I have any views on the evidence. I
18 do not and should not and must not, and if I did, they would
19 be of no consequence to you. It is your views, your solemn
20 and collective judgment as to what the evidence shows that
21 must control your determination.

22 Now, the three defendants before you have pled
23 not guilty to the charges against them. That placed imme-
24 diately on the Government the burden of proving their
25 guilt beyond a reasonable doubt before any one of them

1 3Md

2 could be found guilty of any of these charges. That is a
3 burden that never shifts; it must be in your mind as you
4 deliberate. The defendants must be acquitted, as I say,
5 unless the burden has been sustained as to any one of them
6 on these charges.

7 Now, as a corollary of the Government's burden
8 of proving guilt beyond a reasonable doubt, it is the law
9 that a defendant does not have to prove his innocence,
10 does not have to adduce proof of any kind. On the contrary,
11 a defendant is presumed innocent of the charges stated in
12 the indictment. That presumption existed in the defendant's
13 favor at the outset of the trial, and it has continued
14 throughout the trial. It is a presumption in their favor
15 as you proceed to your deliberations in the jury room.
16 This presumption of innocence is sufficient to acquit unless
17 you, the jury, are satisfied beyond a reasonable doubt of
18 the guilt of the defendants from all the evidence in the
19 case.

20 Because it is basic, you must have in mind the
21 meaning of standard of proof beyond a reasonable doubt.
22 When we speak of a reasonable doubt, we mean, as the words
23 indicate, a doubt founded on reason; it is a doubt which
24 is substantial, and not merely shadowy. A reasonable doubt
25 is one which rests upon judgment, your common sense and

1 4Md

2 your experience, applied to the evidence or lack of evidence
3 in the case. It is not an excuse to avoid the performance
4 of an unpleasant duty; it is not sympathy for a defendant.
5 A reasonable doubt is such a doubt as would cause a prudent
6 person to hesitate before taking action in some affair of
7 importance to himself or herself.

8 Putting it a little differently, if you are
9 confronted with an important decision, and after reviewing
10 all the factors that are pertinent, you are beset by un-
11 certainty and are unsure of your judgment, then you have
12 a reasonable doubt. And, conversely, taking into account
13 all the elements that pertain to the problem, if you have
14 no uncertainty and no reservation about your judgment,
15 then you have no reasonable doubt.

16 Proof beyond reasonable doubt does not mean
17 proof to a positive certainty or proof beyond all doubt.
18 If that were the rule, nobody could be convicted in any
19 criminal case where there was an issue of fact. It is
20 impossible logically to prove a fact, especially when in
21 the past, to an absolute or mathematical certainty. That
22 kind of certainty is not required.

23 On the other hand, you will realize from what
24 I have said that the prosecution's burden of proof is very
25 high and that you may convict only if your mind is free of

1 5Md

2 any such uncertainty or reservation as I have undertaken
3 to describe.

4 Now, keeping those basic and generally appli-
5 cable principles in mind -- and I will supplement them
6 with some more later on -- let's turn to the accusations
7 in this case and the problems that they present for your
8 decision. You know that we have a four-count indictment,
9 an indictment that charges four separate crimes.

10 By the way, the indictment, as you know, is
11 not evidence, but simply a set of accusations and is avail-
12 able to you if it will help in your deliberations, and I
13 think I will ask that a copy, a clean copy be prepared and
14 be sent with you to the jury room when you retire later on.
15 I repeat that it is simply a statement of charges. It is
16 not evidence. But I think it may help you in following
17 the matters through your deliberations to have a copy
18 available to you.

#2 19 The first of the four counts in this indictment
20 which I will begin by describing generally to give you the
21 organization and scheme of it, names four defendants. It
22 names as defendants Akbar Moazezi, Susan Moazezi, Veronica
23 Hignite, and Augusto Trujillo-Hoyos. As you know, only
24 the first three of those are on trial in this case and
25 charged in this first count so far as you are now concerned.

6Md

The first count charges a conspiracy. It charges that those four named defendants -- three for our purposes -- and other people during a period beginning, it is alleged in October, 1972, were engaged in an unlawful conspiracy to have forbidden dealings in so-called controlled substances. More specifically, this charge asserts that those named conspired during the relevant period to import illegally such controlled substances, and then it goes on to charge, secondly, that they conspired to distribute or possess with intent to distribute such controlled substances.

As you know, under this indictment as it is affected and controlled by the evidence that has been placed before you, the so-called controlled substances with which you will be concerned are cocaine and marijuana for purposes of this conspiracy charge.

You know, and I remind you, that the defendant Veronica Hignite is named only in this conspiracy count, and not in the three remaining counts, which are so-called substantive counts. And I will say something about those words in a couple of minutes.

As to the three substantive counts, they charge that the defendants Susan and Akbar Moazezi on a date in January, 1974, unlawfully, knowingly and intentionally possessed with intent to distribute certain controlled

1 7M3

2 substances, and, more specifically, under Count 2, cocaine;
3 under Count 3, heroin; under Count 4, marijuana. I have
4 referred to those last three counts as substantive, and I
5 have tried by emphasis of voice to distinguish them in
6 some useful way from the first count, the conspiracy charge.

7 Let me say a few general words about that which
8 may be of some use to you in keeping the pertinent ideas
9 organized in your mind, that is, let me speak generally
10 a few words about the distinction in our law between the
11 charge of conspiracy and charges of substantive offenses.
12 As I shall be repeating to you very shortly, the gist or
13 essence of a conspiracy is a combination or agreement to
14 do some criminal or wrongful thing. You can have a conspir-
15 acy, and the evidence may prove the elements of a conspiracy,
16 even though the unlawful objective on which the conspirators
17 agreed is never carried out. To make that point very simply,
18 let me use the hypothetical illustration of a conspiracy to
19 commit a murder, homicide.

20 As I have just told you, the essence of the
21 crime of conspiracy is the agreement or arrangement or
22 combination to carry out that murder or homicide. You can
23 have the essential elements of that kind of conspiracy
24 established, and you could have people guilty of a conspir-
25 acy to murder, even though the intended victim is never,

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1 8MJ

2 in fact, killed.

3 Now, in that hypothetical situation, the sub-
4 stantive offense is murder. However, it may be defined
5 under a particular law, and it is only accomplished, obvi-
6 ously, by the killing of the intended victim. That
7 substantive offense in that hypothetical situation is
8 distinguished from the conspiracy, the combination or agree-
9 ment to carry out the substantive offense, and it may or
10 may not help you as you work your way through this case as
11 to Count 1, the charge of conspiracy.

12 Counts 2, 3 and 4, as I have said several times,
13 are substantive charges of unlawful possession with intent
14 to distribute these so-called controlled substances.

15 Now, a few more general things about the concepts
16 and the background of this indictment, and then we will go
17 more closely to the specific charges.

18 In our federal system -- and I think it is
19 true in most of the states, but that doesn't concern us
20 now -- in our federal system charges of crime can be made
21 only on the basis of statutes, that is, the laws enacted
22 by the Congress. There are no crimes in the federal system,
23 except as they may be kinds of conduct forbidden by laws
24 that Congress enacted before the conduct occurred. So a
25 federal indictment rests or is based upon statutes of one

9nd

kind or another, and that is true in this case. None of us need to have in mind the exact designations or wording of any of these statutes, but it may help you to have an understanding of the problems if I just very briefly describe to you the statutes that underlie this indictment.

First of all, we have a federal statute that outlaws conspiracies. That statute says that it is a federal crime for two or more people to combine or conspire together to violate a law of the United States, that is, it is a federal crime to commit any substantive offense as I have defined that term of substantive offense for you.

Then, under other statutes it is forbidden to engage in the importation into the United States of certain so-called controlled substances. That list of controlled substances includes cocaine and marijuana.

The statutes regulating controlled substances also provide that it is a federal crime to distribute, or to possess with intent to distribute, any of these controlled substances. Later on I shall be emphasizing a point that I mention in this connection. You will note that as far as laws which concern us extend, there is no prohibition in them against the possession of any controlled substance for personal use. What is forbidden is the distribution of such substances, or the possession of them with the intent

1 10M1

2 to distribute them, and I will later on be elaborating a
3 little bit on the meaning of these terms in the statutes.

4 Now, I have told you that the controlled sub-
5 stances governed by this set of federal statutes includes
6 cocaine and marijuana. They also include heroin. I men-
7 tioned to you what I hope I have already made clear, that
8 so far as the first count is concerned, the conspiracy
9 count, it is concerned only with cocaine and marijuana.
10 There is a substantive count, Count 3 of the indictment,
11 that relates to heroin, and that is the only significance
12 of heroin in this case.

13 Let us proceed through the indictment, and let
14 me tell you what are the essential elements the Government
15 has undertaken to prove beyond a reasonable doubt in order
16 to make out its case against these defendants.

17 The first count is the conspiracy count. Again,
18 it may help to fix some of these matters in your mind --
19 and that is the only reason I do it -- if I read substantially
20 this indictment to you. I am going to now read the conspir-
21 acy count. I will read it in two installments, and I will
22 read it up to a point where there is a heading called
23 "Overt Acts." I will stop at that point for the time being.
24 I will read to you in a little while what follows that heading,
25 and I will undertake to make apparent to you why for clarity

1 1111

2 and convenience I do the reading on the installment plan in
3 that fashion.

4 Count 1 reads as follows:

5 "The Grand Jury charges:

6 "1. From on or about the early part of October,
7 1972, and continuously thereafter, up to and including the
8 date of the filing of this indictment in the Southern District
9 of New York, Susan Moazezi, Akbar Moazezi, Veronica Hignite,
10 also known as 'Ronnie,' and Augusto Trujillo-Hoyos, the
11 defendants, together with Jeremiah 'Judd' Scanlon, named
12 herein as a co-conspirator but not as a defendant, and
13 others to the Grand Jury known and unknown, unlawfully,
14 intentionally and knowingly combined, conspired, confederated
15 and agreed together and with each other to violate ..."
16 certain named sections of the United States Code, about
17 which I have told you a little bit.

18 "2. It was part of said conspiracy that the
19 said defendants and co-conspirators unlawfully, intention-
20 ally and knowingly would import into the United States
21 certain narcotic and non-narcotic drug-controlled substances.

22 "3. It was further part of said conspiracy
23 that the said defendants and co-conspirators unlawfully,
24 intentionally and knowingly would distribute and possess
25 with intent to distribute . . . " such substances.

1 12MD

2 Now, I will stop there, as I say, and pick up
3 later on the reading of that count.

4 Before you could convict any of the defendants
5 before you on this conspiracy count, you would have to be
6 satisfied beyond a reasonable doubt on each and every one
7 of three essential elements, and when I say each and every
8 one, that means logically and linguistically that if any
9 one of them is not established beyond a reasonable doubt,
10 you must acquit.

11 Here are the three essential elements as we
12 call them:

13 First, that sometime between October, 1972, and
14 March, 1974, when the indictment was returned, there was
15 a conspiracy of the kind the Government alleges, namely,
16 a conspiracy, part of which was the unlawful importation
17 of controlled substances and/or the distribution or sale
18 of such substances.

19 Second, that the defendants here on trial, or
20 one or more of them, knowingly and intentionally partici-
21 pated in that conspiracy, and

22 Third, that one of the conspirators, whether one
23 of the conspirators, whether one of these on trial or any
24 other, committed at least one of the overt acts set forth
25 in the indictment for the purpose of furthering the conspiracy.

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1 13Md

2 I will read to you those overt acts after awhile.

3 Each of these essential elements requires some
4 elaboration or explanation, and I proceed to that now.

5 As to the first, the requirement of proof that
6 the alleged conspiracy actually existed, you need have in
7 mind the concept of conspiracy. A conspiracy for the pur-
8 poses of this case may be defined as a combination or
9 agreement of two or more persons by concerted action to
10 accomplish a criminal or unlawful purpose. The unlawful
11 combination to violate the law is the gist of this crime
12 of conspiracy.

13 Although we speak of agreement or understanding,
14 you have in mind that it is not necessary that the Government
15 prove a formal agreement or partnership arrangement in the
16 usual, lawful sense of those words. Common sense will tell
17 you that when people, in fact, undertake to enter upon a
18 criminal conspiracy, much is left to informal and unexpressed
19 understanding. And that may be true in the discovery of
20 a conspiracy in a particular case. But there must have been,
21 however it is shown, a clear and unequivocal understanding
22 or agreement that the parties would work together in the
23 illegal enterprise before a conspiracy may be found to have
24 existed.

25 You will also have in mind that the Government,

1 14M2

2 before you may convict on Count 1, must have proved the
3 conspiracy alleged in the indictment, with one, at least,
4 of the unlawful objects there described. You could not
5 convict on this charge if you found only that the defen-
6 dants, or some of them, were engaged in some other or distinct
7 conspiracy separate from the one alleged here.

8 Now, in considering this point, you will have
9 in mind what I think I already told you, that a conspiracy
10 may be a loose and informal kind of combination or under-
11 standing. A member of a criminal conspiracy need not be
12 proved to have known every other member. Members may enter
13 and drop out during the life of a criminal conspiracy, and
14 its activities may change in the course of its existence.
15 Nevertheless, having those things in mind, along with every-
16 thing else I am instructing you on, remember that the
17 Government must prove the conspiracy it alleges as that is
18 defined and limited in the instructions that I am now in the
19 process of giving you.

20 I have told you, and you know from the evidence
21 and the arguments you have heard, that the claim here is
22 that the conspiracy involved or was intended to involve
23 dealings in cocaine or marijuana, or both of them. More
24 or less in passing, let me mention to you that we have all
25 heard some discussion during this trial of distinctions

1 15M

2 which sometimes make a difference between a narcotic and non-
3 narcotic controlled substance. You have heard correctly
4 that for some purposes that don't matter here, those defi-
5 nitions treat cocaine and marijuana differently. Cocaine
6 is a narcotic substance under those definitions; marijuana
7 is a non-narcotic substance. What matters to us in this
8 particular case as it comes on before you for decision is
9 that both of these are controlled substances and both are
10 subject to the laws that forbid, first, importation, and
11 second, distribution, or possession with intent to distribute.
12 And as the issues are formulated or framed for your decision,
13 it is of no consequence that you have in mind the defini-
14 tional distinction that I have just mentioned to remind you
15 that it did occur and got presented to you in the course
16 of this trial.

17 I am instructing you in this context to establish
18 the kind of conspiracy it charges, the Government is not
19 required to have proved that the agreement related to both
20 of the substances I have been talking about; it must have
21 proved that the agreement and the unlawful objects related
22 either to marijuana or to cocaine, and it claims to have
23 proved both; but I am instructing you that one or the other
24 would in this respect be sufficient if the other elements
25 are established.

1 16Md

2 Similarly, I have mentioned to you more than
3 once that the conspiracy is alleged to have had two parts
4 or purposes or objects, first, the unlawful importation of
5 controlled substances; second, the unlawful distribution or
6 possession with intent to distribute. I give you a similar
7 instruction here. The Government claims to have proved
8 both unlawful parts or objects. It could make out the
9 charge of conspiracy if it has established beyond a reasonable
10 doubt one or the other as objects of this conspiracy.

11 You could find a conspiracy established if you
12 are satisfied that it was designed either for the unlawful
13 importation or for the unlawful distribution or possession
14 with intent to distribute.

15 Again, somewhat repetitiously, you have in mind
16 that a conspiracy may be established even if its objects
17 or purposes are not shown to have been accomplished. That
18 is because, as I have said over and over again, the crux
19 of the charge of conspiracy is the unlawful combination or
20 agreement or understanding. So there could be a conspiracy
21 whether or not the conspirators carried out their purposes.

22 At the same time, I instruct you, and you will
23 realize, in any event, that evidence that one or more of
24 the alleged purposes was achieved or were achieved may be
25 taken as some evidence that there was a conspiracy in

1 17MD

2 existence for the achievement of such purposes.

3 Now, with these instructions as to the first
4 essential element, whether the alleged conspiracy, in fact,
5 existed, your task in this case, like the task of any jury
6 in a conspiracy case, is to review together and consider
7 all the circumstances as the evidence portrays them to you
8 and make a judgment on all that evidence whether or not
9 there has been proof beyond a reasonable doubt that two or
10 more of the alleged conspirators actually did agree, expressly
11 or tacitly, or both, to pursue one or the other of the
12 unlawful objects charged in the indictment.

13 If you are convinced of that, the precise
14 period or duration of the conspiracy is not in itself a
15 critical matter. What I mean is this: You remember in my
16 reading that the accusation or allegation in the indictment
17 in Count 1 is that the conspiracy existed from sometime in
18 October, 1972, up to the date of the filing of the indict-
19 ment, which was in March of 1974, you will know full well
20 that if there was a conspiracy, it certainly did not endure
21 until 1974. I instruct you, in any event, that the Govern-
22 ment is not required to prove duration for the whole of that
23 period, or, indeed, for anything like the whole of that
24 period. It is sufficient in this aspect if you find the
25 conspiracy existed beyond a reasonable doubt for the Government

1 18Md

2 to have shown that its existence lasted for some period of
3 weeks or months during that overall time alleged in the
4 indictment. If you are not satisfied that such a conspiracy
5 existed for at least some time during the alleged period,
6 your business concerned with Count 1 is ended, and you must
7 acquit all the defendants before you.

8 If you do find that there was such a conspiracy,
9 then you go on to consider, at least in some logical order,
10 the second essential element, which is whether one or more
11 of these defendants before you were members or participants
12 in that conspiracy.

#5 13 That second essential element must be considered
14 by you with special and particular individual reference to
15 each of the individual defendants upon whom you are asked
16 to return a verdict. In this respect, as in all others,
17 questions of guilt or innocence in our system are personal
18 and individual. We don't follow, as I am sure you know,
19 doctrines of guilt by mere association. So the membership
20 or participation of any of these defendants in this con-
21 spiracy, assuming you find there was a conspiracy, must be
22 established by evidence of his or her own words and actions
23 and conduct, considered with his connections with the acts
24 and conduct of other people alleged to have been partici-
25 pants in the conspiracy. I am emphasizing to you that you

1 12M1

2 must look at each individual individually and focus on his
3 own or her own behavior. / At the same time, you will under-
4 stand that the words or actions of any of us anywhere may
5 take on meaning and significance from their relationships
6 with the words and actions of other people.

7 Let me give you an example here. I don't know
8 how helpful it will be, but let me state it to you: If you
9 knew or had evidence that an employer asked or told his
10 employee to go to a local store on a working day, and then
11 you had evidence that the employee turned up in this store
12 ten or fifteen minutes later on that day, you might infer,
13 depending on what other evidence there is, that there is
14 a relationship between that employee's presence in that
15 store at that time and the conversation between the employer
16 and the employee. You might on some other day find that
17 employee in that same store, and you might have evidence
18 that it was his day off, and no evidence of any prior rela-
19 tionship or conversation. You would be likely to draw a
20 different, more limited inference from the one fact of his
21 presence than from the other. In any event, passing by
22 that trivial example, all I am saying is that our words
23 and conduct take on color and significance or may take on
24 color and significance from the words and conduct of others
25 and our relationships with them, and I am instructing you

1 20Md

2 to have that in mind, and also to have significantly in
3 mind the critical concept that you must determine this
4 question of membership for each defendant here, treating
5 him or her as a separate individual and understanding and
6 concentrating on the separate evidence that affects him or
7 her.

8 With these principles in mind, you will, of
9 course, review all the evidence and consider what bearing,
10 if any, it has on any of these defendants in deciding
11 whether any one or more of them was a participant in this
12 conspiracy alleged in Count 1.

13 I think it has become a matter of relatively
14 small consequence for this purpose, if any, but let me
15 mention to you simply as a matter of technical law that
16 there was a point in the trial where in connection with
17 Exhibit No. 6, which is a packet containing some heroin, I
18 charge you that it could be considered only as against the
19 defendants Susan and Akbar Moazezi, not against the defendant
20 Veronica Hignite. Now, as it turns out, that would be the
21 obvious way you would deal with that exhibit in any case,
22 because I remind you of this, the subject of heroin is not
23 involved at all in Count 1, and Miss Hignite is named as
24 a defendant only in Count 1.

25 Count 1, as it is placed before you, is a charge

1 21Md

2 of conspiracy to deal in cocaine and/or marijuana, not heroin,
3 and so you will, in fact, not be considering Exhibit 6 at
4 all in connection with Count 1. In any event, that instruc-
5 tion stands, and I remind you of it and of its place in
6 this whole enterprise as it has come to exist.

7 R I am still on the second essential element, the
8 requirement of proof of membership or participation in a
9 conspiracy. [To find that any defendant here was a member
10 of this alleged conspiracy, you must find that he or she
11 knew the unlawful purpose of the conspiracy and knowingly
12 associated himself or herself with it. The Government must
13 establish beyond a reasonable doubt that a defendant entered
14 into the conspiracy aware of its basic nature and purpose,
15 intending to help carry out the purpose, and with a specific
16 criminal intent, that is, with the intent to violate the
17 laws against narcotics transactions involved in this case.

18 Now, emphasizing something I already said, I
19 charge you that mere association with one or more conspira-
20 tors or presence with them when they were conspiring or
21 committing a crime does not in itself make a person a member
22 of a conspiracy. Knowledge of a conspiracy without some
23 participation is not sufficient. What is necessary -- this
24 is repetitious -- is that the defendant have become asso-
25 ciated, however informally, with the conspiratorial scheme

22Md

or plan, knowing its principal purpose or purposes and intending in some way to help carry out that purpose or those purposes. Now, if a person in that sense does become a participant in a conspiracy, he may be found to have had guilty participation, even if his participation is only in some parts or aspects of the conspiratorial enterprise. He may or she may -- repeating something I said earlier -- be a member even if he or she does not know or ever see the other members or all of the other members of the conspiracy.

The question here on this second essential element, to repeat, is whether the defendant you are considering voluntarily joined in the combination or understanding knowing what the venture was about and meaning to participate in the sense of helping to accomplish its purposes.

#6 The indictment charges in Count 1 that the defendants knowingly and intentionally conspired in the forbidden way we have been talking about. Those words, "knowingly and intentionally," particularly and specifically identified the element of criminal intent that I, of course, have been talking about whenever I have been telling you about the requirements of proof to bring out membership or participation in a criminal conspiracy. I am going to underscore those words only because they are critical in this and most criminal cases. Without the requisite kind

1 23Md

2 of criminal intent most crimes cannot exist, cannot be proved.

3 But let me remind you of some general conceptions about

4 those words that you should and will have in mind as you

5 consider this case, and, indeed, consider all four counts

6 in this case.

7 Though the words are important, those words,

8 "knowingly and intentionally," are not very technical or

9 subtle in their meaning in this connection. We say that a

10 person acted knowingly and intentionally in this sense if

11 that person is shown to have acted deliberately and purposely,

12 with awareness of what he or she was doing, not as a result

13 of mistake or accident or negligence or inadvertence. A

14 defendant need not be shown to have known that he was vio-

15 lating some specific or particular law or to have known the

16 words of any particular statute. At the same time, in this

17 case I have instructed you, and I do remind you, that the

18 kind of unlawful knowledge and intent that must be proved

19 is specific knowledge that the conduct in question was

20 violative of laws regulating dealings in controlled substances,

21 whether narcotic or non-narcotic. These qualities, knowledge

22 and intent, are conditions, of course, existing in people's

23 minds.

24 Somebody said once, correctly, I think, that the

25 state of someone's mind is a fact, like the state of his or

1 24Md

2 her digestion, but both probably, and certainly the fact of
3 state of mind is the kind of fact that must normally be got
4 at by so-called circumstantial, rather than direct evidence.
5 We don't have means for observing with our senses directly
6 the state of someone's mind, and so outside the courthouse,
7 as well as inside, it is our habit, our normal practice, our
8 experience to make judgments about the state of someone's
9 mind by circumstantial evidence. We judge people's inten-
10 tions and what they know by what they do and what they say
11 all in the light of the surrounding circumstances that give
12 meaning and significance to their conduct and their state-
13 ments.

14 So in this case, as elsewhere, you will be
15 called upon to consider all the evidence as it has been
16 placed before you as you consider in the case of each
17 defendant whether he or she knowingly and intentionally
18 with the requisite knowledge and intent entered into the
19 conspiracy charged in Count 1.

20 We come to the third essential element, the
21 requirement of proof at least as to one overt act. You
22 remember I stopped reading the indictment at the point where
23 these overt acts are alleged. I am about to read you that
24 portion of it. Let me simply say that this third essential
25 element is a requirement of proof that at least one kind of

1 25Md

2 action was taken by at least one conspirator, whether one
3 of these on trial before you or any other, during the con-
4 spiracy and with the object of furthering it. The theory
5 of this very briefly is simple, but it may make this more
6 intelligible to you to know it.

7 It is thought generally in our law the people
8 may talk about and even perhaps agree to engage in some kind
9 of unlawful conduct. It is also thought for a number of
10 reasons that if all they do is talk and all they do is agree,
11 and nobody does a single thing to carry out that agreement
12 to do unlawful things, they are not to be prosecuted crimi-
13 nally for that. In order to prevent prosecutions for mere
14 talk in the nature of agreement, the law generally requires
15 that to establish a conspiracy there must be proof of at
16 least one overt act, one thing done or said during the
17 conspiracy having the purpose of achieving its objects, one
18 thing done or said by a participant in the conspiracy.

19 On that basis and to satisfy that requirement,
20 this indictment alleges eight overt acts. I will read this
21 portion to you. It says:

22 "In pursuance of the said conspiracy and to
23 effect the objects thereof, the following overt acts were
24 committed in the Southern District of New York:

25 "1. On or about October 20, 1972, Defendant

Page 5

1 26Md

2 Susan Moazezi purchased approximately 19 pounds of marijuana
3 from co-conspirator Jeremiah 'Judd' Scanlon.

4 "2. On or about December 10, 1972, Defendant
5 Susan Moazezi purchased approximately three-fourths of
6 cocaine from co-conspirator Jeremiah 'Judd' Scanlon.

7 "3. On or about December 13, 1972, Defendants
8 Susan Moazezi, Akbar Moazezi and Veronica Hignite, a/k/a
9 'Ronnie,' and Jeremiah 'Judd' Scanlon met and had a conver-
10 sation.

11 "4. On or about December 13, 1972, Defendant
12 Susan Moazezi delivered approximately \$4,000 to co-conspira-
13 tor Jeremiah 'Judd' Scanlon.

14 "5. On or about December 18, 1972, co-conspirator
15 Jeremiah 'Scanlon,' acting as a courier, delivered to
16 Defendant Susan Moazezi approximately 600 grams of cocaine
17 which had been obtained by Scanlon from Defendant Augusto
18 Trujillo-Moyos in Columbia, South America.

19 "6. On or about December 23, 1972, Defendants
20 Susan Moazezi, Akbar Moazezi and Veronica Hignite, a/k/a
21 'Ronnie,' and co-conspirator Jeremiah 'Judd' Scanlon met and
22 had a conversation.

23 (Continued on next page.)

24

25

"7. On or about January 14, 1973, co-conspirator Jeremiah 'Judd' Scanlon, acting as courier, delivered to Defendant Susan Moazezi approximately 400 grams of cocaine which had been obtained by Scanlon from Defendant Augusto Trujillo-Hoyos in Colombia, South America.

"8. On or about March 24, 1973, co-conspirator Jeremiah 'Judd' Scanlon, acting as courier, delivered to Defendant Susan Moazezi approximately 690 grams of cocaine which had been obtained by Scanlon from Defendant Augusto Trujillo-Hoyos in Colombia, South America."

I repeat, the charge under Count 1 cannot be made out unless at least one of those overt acts is proved beyond reasonable doubt together with the first two of the essential elements as I have given them to you.

You notice, an overt act need not be criminal in its nature; it can be a conversation, but it must be one of those alleged, it must have been committed during the conspiracy and with the goal of furthering it.

We come to the second, third and fourth counts, what I have called the substantive counts. Of all three of those named, only the Moazezis are charged in those counts as defendants, not Miss Hignite. They are brief. They read essentially the same way, and I will read the second count, one sentence long, to you. It says, "On or

1 28Md

2 about the 16th day of January, 1974, in the Southern District
3 of New York, Susan Moazezi and Akbar Moazezi, the defendants,
4 unlawfully, intentionally and knowingly did possess with
5 intent to distribute . . . approximately 3.74 grams of
6 cocaine hydrochloride."

7 The third count is the same, except that it deals
8 not with cocaine but with .13 grams of heroin hydrochloride.

9 The fourth count is the same, except that it
10 alleges possession with intent to distribute of approximately
11 311.49 grams of marijuana.

12 Each of those three substantive counts, as I have
13 said, alleges a separate crime. Obviously, you consider
14 each separately, and the alleged guilt or the innocence of
15 each defendant named in each count separately.

16 Having said that, let me tell you that the
17 essential elements of the offense, as you would realize,
18 I think, are the same with respect to each of these three
19 counts, at least, in their conceptual character, and having
20 in mind, of course, that each deals with a different controlled
21 substance.

22 So I charge you as to the three essential elements
23 covering all three counts, 2, 3, and 4 together again, there
24 essential elements, each and every one of which must be
25 established to make out any of these substantive offenses.

1 29MA

2 These are as follows:

3 "First, that the substance allegedly possessed
4 with intent to distribute in each of the counts was, in
5 fact, the controlled substance alleged -- cocaine in Count
6 2, heroin in Count 3, and marijuana in Count 4.

7 "Second, that the defendant or defendants you
8 are considering possessed that substance with intent to
9 distribute it.

10 "Third, that the defendant acted knowingly and
11 intentionally in so doing."

12 Now, again, I am going to elaborate on those
13 essential elements more briefly in some respects than in
14 others. The first essential element, as I just told you,
15 is the requirement of proof that the alleged controlled
16 substance was the kind of substance involved in the alleged
17 possession. This does not, I think, constitute the critical
18 or central element in the controversy as this case comes
19 before you. The Government claims, and a Government chemist
20 testified, that from his analysis the substance in Exhibit 9
21 in evidence, which is the substance involved in Count 2,
22 was and is cocaine of a stated purity. Likewise, in connec-
23 tion with Count 3, the chemist told you that Exhibit 6 con-
24 tains heroin of a purity he again specified. Finally, the
25 chemist's testimony is that Exhibits 1, 4, 5, 8 and 11

1 30Md

2 contain marijuana, and these are the exhibits employed by
3 the prosecution in connection with Count 4, which charges
4 the possession of marijuana.

5 I said to you there doesn't appear to be any
6 particular dispute about the nature of these substances,
7 but I remind you, and I underscore the reminder, that before
8 you could convict on any of these counts it is for you to
9 be satisfied beyond a reasonable doubt that the substance
10 involved was the kind of substance alleged in connection
11 with that count.

12 Now, as its second essential element, each sub-
13 stantive count goes on to charge that the defendants possessed
14 the controlled substance in question. The word "possessed"
15 is not technical and not very subtle. You possess something
16 for this kind of purpose, as for others, when you have it
17 in your physical custody or under your control. We possess
18 things that are in our pockets, in our automobiles, in our
19 homes and in our offices. I possess many things in my own
20 house. But I don't necessarily possess all of them. Some
21 of the things in the house, as in yours, are mine alone,
22 and I possess them. Some I may possess with my wife or
23 the entire family, and then I would have possession along
24 with others. Some are possessed by my wife or children, or
25 either of them, and though they are there, I do not in any

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meaningful sense possess them. Now, whether a particular person has possession of a particular thing in his house or elsewhere is a function of all the circumstances as they may disclose themselves or be disclosed to you.

In this case you will consider all the circumstances as the evidence reveals them in deciding in each instance whether one or both of the Moazezis had possession of any of the substances alleged in the substantive counts, 2, 3 and 4.

#8

Now, those counts charge that the possession was "with intent to distribute." I have talked to you about those words. I remind you that the statutes that concern us here do not forbid possession for strictly personal use. The forbidden possession must be with intent to distribute. I think I have told you -- I repeat -- there is nothing complicated about the word "distribute." To distribute in this context means to transfer or deliver, by sale or otherwise, to other people.

You have heard some discussion about this subject, and I think it will be a central subject for your consideration in connection with the substantive counts. As I say, if you find possession, you must find that the possession was with intent to distribute before you could convict on these counts.

32Md

1 32Md

2 You have heard argument that was largely or

3 primarily addressed to that aspect of your problems. I'm

4 not going to repeat the arguments, and I'm not going to

5 review the evidence on this or any other subject, because

6 you heard sufficient summations on Saturday afternoon.

7 Merely as a reminder and perhaps to help you to begin to

8 focus on this notion of possession with intent to distribute,

9 I will mention a couple of things, by no means all the things,

10 that you will or may want to consider on this subject.

11 [If you find there was possession and you find

12 that it was the kind of substance charged in the particular

13 count, you want to have in mind quantity of the substance

14 and the quality. Similarly, you will want to consider what-

15 ever the evidence shows about the prior behavior of either

16 defendant with respect to the substances in question, or

17 comparable substances.]

18 In short, you will consider all the surrounding

19 circumstances in making your decision whether the possession,

20 if you find possession, was with intent to distribute.]

21 Now, finally, as to the third essential element,

22 the substantive count, a defendant to be convicted must be

23 shown to have acted knowingly and intentionally -- and I have

24 talked about those words earlier, the words that define

25 criminal intent. I pointed out to you that the conduct must

1 33Md

2 be shown to have been voluntary and deliberate, not the
3 result of mistake or accident. I will simply remind you of
4 those things and the other things I said about those words
5 in the instructions on Count 1 and instruct you now to apply
6 those same conceptions in dealing with the substantive
7 counts.

8 You may not be displeased to be informed that
9 we are moving toward the end of these instructions, but
10 there are some more things I must tell you before we give
11 you the case to deliberate on.

12 Moving away from the elements of the offenses
13 and the substantive concern, I am turning now to some general
14 things you should consider in the conduct of your delibera-
15 tions. One obvious thing that always appears in jury in-
16 structions, and probably doesn't have to appear, but it is
17 a fixed habit, is the subject of credibility. I think you
18 know whether you are instructed on it or not, that your
19 source of knowledge about the alleged facts in this case
20 is primarily the testimony of the witnesses you heard. You
21 would know that your effort to arrive at accurate, reliable
22 knowledge will entail in large measure judgments about the
23 extent to which you can place trust in the testimony of
24 any particular witness or witnesses, and so you will be
concerned with questions of credibility. Though this is a

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standard topic, it is not a subject of legal technicality in any way at all. Lawyers and judges are not especially expert in deciding questions of credibility, at least, it is a premise of our system that people like you, who are laymen, lay people so far as the law is concerned, are best to be entrusted collectively with such problems. So you will be considering credibility, and you will be considering lots of things. You will be recalling the witnesses on the stand and how they testified and how they looked to you; you will be asking yourselves how each of these witnesses appeared. Did he or she appear to be truthful, candid, frank and forthright? Or was the witness evasive or shiftily or otherwise suspect in some way? Did the witness appear to know what he or she was talking about? And more importantly, did the witness appear to be intending to give you that knowledge truthfully and accurately? Was the testimony consistent or self-contradictory? How did it compare and how consistent did it seem in light of the other evidence and other facts that you know about? If there were contradictions or inconsistencies, how major or minor? How far do they cause you to reject the other testimony of the witness? How far would you attribute a particular inconsistency or contradiction to accident or mistake, to an innocent cause, rather than a deliberate or willful

1 untruthfulness?

2 If you find that any witness has willfully
3 testified falsely about any material fact, it is within your
4 sovereign prerogative to disregard that witness' testimony
5 altogether, or in your judgment you may accept and use such
6 parts of it as seem to you to remain acceptable and useful.
7

8 In considering credibility, generally in consid-
9 ering how far we can believe people and things they tell us,
10 it is a familiar experience for all of us that we are likely
11 to take into account, or may well take into account, the
12 interest or the motives of the particular person in telling
13 us whatever he or she is saying. This is a factor that you
14 will want to touch and consider in appraising the testimony
15 in this case. People do have interests and motives in
16 things they tell about, in court and out of court, and you
17 will review that here.

18 You know, whether I say it or not, that law
19 enforcement people may have interests in the outcome of
20 cases for which they have a responsibility. You know that
21 the families and friends of parties in lawsuits, and not
22 least of all defendants in criminal cases, have interests
23 and motives touching those parties that may affect the nature
24 and quality and content of the testimony they give. I won't
25 dwell on that generally. I simply remind you as you appraise

1 36M3

2 the witnesses you will want to consider in general with
3 each witness this fact of interest.

4 I want to dwell, and under the law I must dwell,
5 particularly on one aspect of this general subject of inter-
6 est, and that is the subject of so-called accomplice testimony
7 and how it should be dealt with in deciding issues of fact
8 in a criminal case. You will note from the summations on
9 Saturday that there was brought to your attention the testi-
10 mony of the witness Jeremiah "Judd" Scanlon. You know that
11 he came here and presented himself to you. He is named in
12 the indictment as a co-conspirator in the charge leveled in
Count 1 of this indictment. You will realize from your
knowledge of the world that the Government frequently deems
15 it is compelled or required to rely on the testimony of
16 accomplices in crimes of persons who have themselves, accord-
17 ing to what they say, participated in the criminal enterprises
18 about which they they come to testify. The Government takes
19 the position, and nobody particularly quarrels with this,
20 that it must take the witnesses as it finds them in perform-
21 ing the function of attempting to enforce the criminal laws.
22 So there is no prohibition, and nobody here claims there is
23 any prohibition against the use of so-called accomplice
24 testimony in criminal prosecutions.

25 And I will tell you, in case anything else is

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in your minds from having heard about other bodies of law, that under the federal law, which applies here, the testimony of an accomplice is sufficient by itself to justify a conviction if it serves to convince the jury or the trier of the fact beyond a reasonable doubt.

Having said that, I also instruct you that you are required -- and I am sure you do this, in any event -- to scrutinize such accomplice testimony with particular care and to view it with particular caution in determining whether or not you will find it credible. You will specifically take into account the arguments you heard on Saturday as to the motives Mr. Scanlon may have had to give the testimony he placed before you. You will be asking yourself certain obvious questions: Was that testimony a fabrication in whole or in part made up by Scanlon for the purpose of justifying benefits that he had already received or hoped to receive? Was he lying because of some promise that in exchange for lies he would receive favorable consideration in connection with his still pending troubles with the State criminal law? Or was it his belief that he would serve his own interests best by coming forward and telling the truth? Did he as a matter of conscience or for other selfish reasons take the stand and tell you what he knew accurately, in whole or in part? Did he think that the best

38Md

way for him to favor himself, to benefit himself, was to make false accusations? Or did he think that he would serve his own best interests by telling truthfully damaging and criminal things that he knew firsthand in which he had himself participated?

These simply recall to you the kinds of questions that were argued to you at much greater length on Saturday.

Again, I don't want to repeat the arguments. Again, let me tell you that in the end, having in mind this special concern about accomplice testimony, you will have to put together the testimony of Scanlon as you would that of any other witness and consider all the facts and circumstances including his asserted role as accomplice in making your ultimate judgments about the credibility of that testimony.

Now, ladies and gentlemen, in judging credibility, and, in general, in your deliberations you will be aware always that there are twelve of you, that ancient and traditional number. You realize that the purpose of having such a number is to have you reason together and seek a collective judgment that will do justice in this case. That means that each of you will feel free, certainly, and indeed obligated to contribute your own personal point of view, your own wisdom and insights to the collective deliberations. By the same token, you will go and be in the jury room prepared to

1 listen attentively and courteously to the views of your fellow
2 jurors. If you have a point of view at some stage of the
3 deliberations and rational discussion persuades you that that
4 point of view was erroneous, you won't hesitate in good
5 conscience to change it. At the same time, you will realize
6 that nothing requires or permits you to give up a conscientiously
7 held point of view merely because you happen to be
8 outnumbered or outvoted at any particular time.

9
10 I think you all know, but I now remind you, that
11 in order to return a verdict on any count against any defendant,
12 it must be unanimous. A unanimous verdict must reflect
13 the individual judgment, the individual conscience of each
14 member of the jury returning that verdict.

15 If you find while you are deliberating that you
16 need to hear any of the testimony reread, send us a note
17 through your foreman, and we will ask our reporter to find
18 it, and we will have it read to you. If you need to see
19 any of the exhibits, let us know about that, and we will
20 attend to that need as promptly as we can.

21 If you need to hear again any part of these
22 instructions, similarly send a note, and I will try to
23 satisfy that requirement.

24 Counsel and I are required to be available for
25 your assistance at all times. If you send a note, and there

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2 is a delay in responding, I trust it will be because sometimes
3 it takes a little time to organize a response, sometimes to
4 agree clearly on what the note means. I told you before we
5 must deal in this arm's length way because now the case is
6 yours, and we must refrain from intruding in your delibera-
7 tions.

8 So I enlist your understanding if we are compelled
9 to delay at any point in responding.

10 Let me stress to you that there are three defen-
11 dants and four counts, all three named in Count 1, only the
12 Moazezis named in Counts 2, 3 and 4. So you will have sepa-
13 rate verdicts about each defendant under each of the four
14 counts.

15 The procedure in this court -- and I will ask
16 you to follow it -- is to deliver verdicts when they are
17 reached orally, and that is one of the responsibilities of
18 your foreman. We prefer that you not send in a written
19 verdict, but let the marshal know when you have a verdict,
20 and we will ask you to come out and deliver it orally in
21 open court.

22 If you reach a verdict on any of the counts
23 less than all, and you find it convenient and useful and
24 agreeable to report that verdict before you have arrived
25 at a verdict on the remainder, you are invited to do that

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at any time during your deliberations. If you have occasion, as you may, to send us notes, and if at the time of such a note or notes you are divided in your vote, as you may be, don't tell us the vote, that is a private matter for the jury, and, again, one that we should not be participating in.

I am about concluded with these instructions, and I must ask you just to wait while I find if counsel have any additional or correcting things that they wish me to say.

Will you come to the side bar, gentlemen?

(At the side bar.)

THE COURT: Mr. Reilly?

MR. REILLY: Nothing.

THE COURT: Mr. Graber?

MR. GRABER: Nothing, your Honor.

THE COURT: Mr. McGuire?

MR. MC GUIRE: I have only two minor matters, your Honor, that I would like to bring to the Court's attention.

At one point toward the beginning of your talk about the conspiracy count you made the statement that there are three conspirators. So far as you are concerned, or something of the sort. It seems to me, your Honor, that that

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does not accurately reflect the state either of the indictment or of the facts that have been testified to in this court. I have not formulated a way of attempting to correct that, but I think it is a statement that might have given a misleading impression to the jury.

THE COURT: Formulating is part of your job, Mr. McGuire. What, if anything, do you wish me to say at this point?

MR. MC GUIRE: May I have the Court's indulgence to consider that while I am pointing out the second matter? I had understood on Saturday that your Honor was going to grant and give me supplemental request No. 2, dealing with a stake in the outcome of the conspiracy, which was a quotation in whole from Ciancetti against The United States.

THE COURT: I misled you if you thought I was going to give it verbatim. I thought the substance was covered. I don't usually quote to the jury even Second Circuit opinions.

MR. MC GUIRE: I do except your Honor's failure to give the charge as requested.

Now, on the other matter, may I have just a second to consult with all counsel?

THE COURT: You may have just a second.

(Pause.)

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THE COURT: (To the jury) While I'm keeping the jury waiting, with the consent of counsel let me at this time thank Miss Vivone especially for getting up so early. The time has come for me to excuse you. The other twelve, as you see, have survived and seem to be fit. I think you know the function of alternate jurors, and you saw that the function had to be served in the case of Mr. Butler moving in to replace Mr. Brown. So without making a long speech, let me say that we do appreciate your attendance and your attention and your service.

I am informed by Mr. Swansiger, the Clerk of the Court, that all of you are in your second week of jury service, and in the case of Miss Vivone and the others, though I am not inviting you to do this, I will say that if any of you when your responsibilities to this case have ended would desire to be excused for the remainder of this second week, I will order that your desire be honored and that you be excused. I trust you understand what I mean, Miss Vivone. We are not trying to get rid of you, but you did work Saturday, and this has been for the jury in some ways a more strenuous case than others.

So if it is your desire and preference when you return to the jury room, you may tell the jury clerk that I have ordered you excused if you wish it, and with that let

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2 me excuse you again with our thanks and with our good wishes.

3 (Alternate juror excused.)

4 (Discussion continued at the side bar.)

5 MR. MC GUIRE: I have consulted with co-counsel,
6 and they have persuaded me to drop the point.

7 THE COURT: All right.

8 (In open court.)

9 THE COURT: Now, if we may have the marshals
10 sworn, the jury may retire.

11 (Marshal sworn.)

12 THE CLERK: The jurors will please go with the
13 marshal.

14 (At 10:19 a.m. the jury retired to the jury room
15 to begin its deliberations.)

#11

16 THE COURT: All right, gentlemen, a few adminis-
17 trative housekeeping details.

18 One, Mr. Swinsiger, who has found it almost
19 impossible to tear himself away, was supposed to start his
20 vacation Friday, but has finally been persuaded to start
21 it today.

22 At some point Mr. Farrar will come in and take
23 over this morning for him. I don't know whether all of you
24 know this, but the practice Mr. Swansiger and I have had,
25 and I assume Mr. Farrar will carry it out, with respect to

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2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK4 -----
5 UNITED STATES OF AMERICA, :

6 -against- :

7 SUSAN MOAZEZI, AKBAR MOAZEZI
8 and VERONICA HIGNITE, :

9 Defendants. :

: 74 Cr. 225

10 -----
11 New York, New York
12 July 20, 1974
13 10:00 A.M.

14 B e f o r e :

15 HON. MARVIN E. FRANKEL,

16 District Judge.

17 A p p e a r a n c e s :

18 PAUL J. CURRAN, ESQ.,
19 United States Attorney,
20 T. GORMAN REILLY, ESQ. and
21 JEFFREY HARRIS, ESQ.,
22 Assistant United States Attorneys.23 HERMAN GRABER, ESQ.,
24 Attorney for defendants Susan Moazezi and
25 Akbar Moazezi.JOSEPH A. NOTARO, ESQ.,
Attorney for defendant Veronica Hignite.

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2 there anything else on these subjects, Mr. Graber?

3 MR. GRABER: Your Honor, I do have a request. I
4 don't know if your Honor wishes us to make it today or on
5 the 19th, and that is basically to sever counts.

6 THE COURT: What happened in the months since this
7 case was pending to justify the making of this motion now,
8 or have you made it in the past?

9 MR. GRABER: We have made it in the past.

10 THE COURT: What did the Court rule?

11 MR. GRABER: That we should make it prior to trial.

12 THE COURT: You mean I did not deny it?

13 MR. GRABER: You denied it but said we should make
14 it prior to trial.

15 THE COURT: It doesn't sound like what I usually
16 do. I frequently talk too much and make trouble for myself,
17 but that doesn't sound familiar.

18 MR. GRABER: Would you bear with me?

19 MR. REILLY: Your decision, your Honor, which was
20 issued on June 24 -- I am sorry -- it was issued earlier.
21 Basically, my recollection is you denied it subject to
22 renewal at a later date.

23 THE COURT: Let's not quibble. That sounds like
24 a ruling I might have made. When I speak of things subject
25 to renewal, I have in mind if anything new comes up I will

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2 hear it. But I don't want a renewal of the same motion I
3 already heard.

4 MR. REILLY: It says: "Motion denied but subject
5 to renewal at trial. So ordered."

6 MR. GRABER: That is my recollection.

7 MR. REILLY: Dated May 6.

8 THE COURT: What do you rely upon that was not
9 before me in your motion?

10 MR. GRABER: At the time we made the motion,
11 your Honor, we were not in possession of any grand jury
12 testimony, any 3500 material regarding the conspirator,
13 co-conspirator, Judd or Jeremiah Scanlon.

14 Upon a reading of the testimony of Mr. Scanlon
15 and referring to Counts 2, 3 and 4 of the present indictment,
16 it is my feeling that there is no connection whatever between
17 the conspiracy charged in the first count of this indictment
18 and the possession here, and just to review, if your Honor
19 will permit me, the history of the indictments in this case,
20 originally the defendants were indicted on a two-count indict-
21 ment charging them with conspiracy, the same conspiracy that
22 we find alleged here, and a substantive count charging them
23 with possession, as I recall of 400 grams of cocaine,
24 something that occurred at or about the time this conspiracy
25 was alleged to have been made.

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2 They subsequently dropped that particular substan-
3 tive count and added these three counts involving the
4 possession of these items before your Honor.

5 As far as I am concerned, your Honor, the only
6 reason that these three counts exist is to attempt to bolster
7 the testimony, what is basically uncorroborated testimony,
8 of one Judd Scanlon, a man who has three indictments pending
9 here -- I am sorry -- two indictments plus one conviction
10 here, two indictments including a Class A-3 felony in the
11 state court in the Bronx where apparently while he was
12 allegedly working for the Police Department of the City of
13 New York, he, behind their back, goes ahead and sells heroin.
14 To bolster that man's testimony with items that no way
15 whatsoever are connected with the conspiracy so far as they
16 can prove, and according to the testimony of Mr. Scanlon
17 in the grand jury the conspiracy as far as he was concerned,
18 he had no part or any knowledge of that conspiracy after
19 June 6 of 1973, six months prior to the seizure of these
20 items.

21 Your Honor, we are not here trying to save time.
22 That is not the reason for combining these here. What it is
23 is at least now they have got some tangible evidence to bring
24 before the Court -- before the jury especially, in order
25 to sway them into believing Judd Scanlon.

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What you have charged in that conspiracy is a horrible crime of immense proportions and they are coming in with three grams of cocaine. The only reason is give them something tangible, and in the interest of justice, in the interest of truth, let Judd Scanlon get on the stand and let him testify and let a jury make up its own mind as to whether or not they want to believe this individual, not throwing in extraneous matter which has absolutely no connection with the conspiracy that he has testified to, and it's apparent, I think, from a reading of the 3500 material and the grand jury minutes, and let them solely decide on that basis and that basis alone. The charges are serious enough where we don't have to cloud the issue and confuse the minds of the jury so perhaps they will fail to see the truth in this matter.

And I would ask that your Honor exercise the interest of justice in this matter and sever those three counts.

THE COURT: You want to be heard, Mr. Reilly?

MR. REILLY: Yes, your Honor.

There is nothing in what Mr. Graber has said that he really didn't know before about the two indictments that came down in this case. The grand jury testimony of Scanlon indicates that his conspiracy lasted from the period of

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2 October of '72 at least and it was before then when he came
3 into the picture and as of June of '73 when he left the
4 picture it was still going on, and when this arrest was made
5 in January of '74 there is no reason to believe this con-
6 spiracy wasn't still going on with or without Judd Scanlon.

7 In fact, when the arrest was made, as the evidence
8 showed today, there were all sorts of paraphernalia and
9 equipment which showed that these defendants were in the
10 business of distributing various types of drugs. There was
11 cocaine in the apartment, there was marijuana and the indict-
12 ment charges conspiracy to import and possess with intent
13 to distribute both cocaine and marijuana, at the very least.

14 This is not a separate count where the possession
15 of a gun or a totally unrelated crime is charged, so that
16 even in your discretion your Honor could keep these counts
17 in and should keep these counts in even if they weren't
18 related to the conspiracy, but it is our basic position they
19 are part of the conspiracy. So for that reason, under the
20 authorities and under Rule 8, we think the joinder of
21 these offenses is proper and no severance should be granted.

22 MR. GRABER: Judge, just for the record, I received
23 the grand jury testimony last Wednesday afternoon and that
24 which is found in that grand jury testimony is what I am
25 basing that motion on right now, the fact that he was no longer

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2 with the so-called conspiracy at least six months prior to
3 this, plus the fact -- and I would like to answer one thing.

4 To assume something is so has no place in this
5 courtroom. It's what their evidence is. I don't believe
6 their evidence, on the basis of the material I have been
7 supplied with, in any way substantiates an on-going con-
8 spiracy, especially one described by Judd Scanlon in his grand
9 jury testimony and on the reports to the agents.

10 THE COURT: It is not exactly an assumption if
11 there is evidence that indicates the existence of a conspiracy
12 it is pretty elementary law that it may continue until some-
13 body shows it stopped.

14 In any event, I will rule at this time that the
15 motion for severance is denied. I can't know the entire
16 record at this point, I have not read the grand jury testi-
17 mony, and I don't think it's appropriate to expect that I
18 should or to assume at this stage that the testimony before
19 the grand jury is the totality of the government's case.

20 MR. REILLY: That is a proper assumption, your
21 Honor.

22 THE COURT: Which is a proper assumption?

23 MR. REILLY: That that is not the totality of the
24 government's case.

25 THE COURT: If when this record is spread before

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2 us there is a crossing of one group of counts to another
3 and it appears to be prejudicial, we may have to take another
4 look, and I think that's a risk that the government must
5 understand it takes from the greater vantage point of its
6 knowledge of the evidence than the Court possesses.

7 Just on the face of this argument, Mr. Graber,
8 if the substantive counts are trivial that is a two-way kind
9 of proposition. That may diminish the claim that there was
10 a huge conspiracy. It doesn't necessarily add to its impor-
11 tance. It still leaves the big issue about the credibility
12 of this alleged participant and informer for you to argue
13 and for the evidence to revolve around.

14 Motion for severance is denied on the basis of the
15 things I have just been saying.

16 I have an envelope from you, Mr. Graber, I think
17 containing passports of your clients.

18 MR. GRABER: Yes, your Honor.

19 THE COURT: I don't know that they have been required
20 to turn them in.

21 MR. GRABER: They have not.

22 THE COURT: I will hand them back to you. They
23 have served your purposes at this time.

24 MR. GRABER: Thank you, your Honor.

25 THE COURT: The record will show the redelivery of

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

SUSAN MOAZEZE, AKBAR MOAZEZI,
and VERONICA HIGNITE,

Defendants.

74 Cr. 225

New York, New York.
August 19, 1974 - 10:00 A.M.
Room 705

Before:

HONORABLE MARVIN E. FRANKEL, District Judge,
and a jury.

APPEARANCES:

PAUL J. CURRAN, United States Attorney for the
Southern District of New York
Attorney for the Government
By: T. GORMAN REILLY, and
JEFFREY HARRIS, Assistant United States
Attorneys, of Counsel.

HERMAN GRABER, ESQ.,
Attorney for Defendant Susan Moazezi

HAROLD F. MC GUIRE, JR., ESQ.,
Attorney for Defendant Akbar Moazezi

JOSEPH A. NOTARO, ESQ.,
Attorney for Defendant Veronica Hignite.

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THE CLERK: Defendant Susan Moazezi ready?

MR. GRABER: Yes, your Honor.

THE CLERK: Defendant Akbar Moazezi ready?

MR. MC GUIRE: Ready.

THE CLERK: Defendant Hignite ready?

MR. NOTARO: Ready, your Honor.

THE COURT: Mr. McGuire, you have an application.

MR. MC GUIRE: If the Court please, since we met last, the defendant has had an opportunity to review some evidence, some of which has been provided by the Government as Brady material, and other of which has been discovered by the defense in cooperation of the Government under the Brady doctrine.

And the application that I have on the basis of that evidence is a renewed application for severance of counsel.

Your Honor will recall that the original application in that regard was denied. I think some history might be appropriate in support of what I have to say.

In June of 1973, the Government's principal witness in this case, Jeremiah Scanlon, was arrested by Federal authorities and charged with a variety of narcotics offenses involving cocaine, and not involving

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any of the defendants here.

After having been in West Street for a couple of weeks, he gave a statement to narcotics officials, a statement which inculpated the defendants here and which said, in broad substance, that they were major sources of cocaine for him.

He stayed in West Street for a total of about two months and was released after a bail reduction because an undercover policeman from the City of New York provided bail money.

That was done through an arrangement between the undercover policeman and Scanlon, under which Scanlon would attempt to produce a narcotics transaction of major proportions involving the defendants here on trial.

The evidence demonstrates quite conclusively that not only was Scanlon not able to do that, but that within a matter of a few weeks thereafter, he was caught with his pants down, so to speak, and was rearrested on a further narcotics transaction involving heroin, for which he is now facing a life sentence in the Supreme Court in the Bronx.

Thereafter, he testified in the grand jury in this building again inculpating the defendants here with essentially the same story as he told back in June.

His grand jury testimony, if memory serves, was given in December of 1973.

In the intervening time, so far as we have been able to determine, and we have had access to the case report file from the Bureau of Narcotics, there was no corroboration of Scanlon's story which the Bureau of Narcotics was able to develop.

Scanlon had given the Bureau some specific leads including, for example, a lead to a purported wire transfer of money by these defendants from New York to Colombia, naming the bank where the transaction supposedly originated and naming the place where it was terminated in South America, and the Government has not been able to come up with the documents that corroborate the existence of that transaction, although we demanded those documents under the Brady doctrine.

Following this six months of unsuccessful investigation, the defendants were arrested in January of 1974, that is, the Moazezi defendants. They were arrested on a warrant which was procured on the basis of the same story that Scanlon had been telling for six months, and which he told in the grand jury, and the evidence will demonstrate that when arrested they had in their apartment, and there may be some dispute as to who was in actual

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possession and who was not, a quantity of marijuana large enough so that the inference might be supportable that it was for purposes of sale, but small enough so that it was entirely consistent with personal use; a small quantity of cocaine as to which the same analysis is true; a matter of a few grams of cocaine, three or four grams, if memory serves, and a very miniscule quantity, 0.13 grams of heroin.

Now, the motion which was made for a severance of counsel was based upon the proposition that while there might be an argument, and while there might be a legitimate triable case brought by the Government for possession of those drugs with intent to sell, it would be a gross miscarriage of justice for them to be subjected to trial for conspiracy to import and sell large quantities of cocaine under these circumstances.

Now, I don't think the record which I have threshed out was fully before your Honor when the application was made the last time. And I think before we do go ahead with picking a jury, it is our obligation to renew the motion for a severance so that the two separate and distinct cases can be tried if the Government so desires on their separate and distinct merits, but so that there won't be the poisonous overflow from one to the other without

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2 substantial connective tissue between them.

3 If I recall correctly, your Honor, in disposing
4 of the motion the last time, said that the Government
5 was going ahead with this matter at its peril, and that
6 unless the connective tissue was supplied, the Government's
7 case was going to be in grave danger.

8 We think that was an appropriate comment, your
9 Honor, but under the circumstances we think it would be
10 wise to ask for an offer of proof as to the connective
11 tissue that the Government proposes to supply between the
12 alleged large-scale cocaine transactions which Scanlon
13 spoke about in the grand jury, and the relatively small
14 time possessor counts with which the physical evidence
15 concerns itself.

16 THE COURT: Does the Government wish to respond
17 to that presentation, Mr. Reilly?

18 MR. REILLY: Your Honor, only briefly.

19 There appears to be nothing new that has
20 been offered here. Rather, it is an argument that would be
21 appropriate summation to try to distinguish these defendants
22 away from the conspiracy. It is the Government's intention
23 to contend and to argue to the jury that the presence of
24 those amounts of cocaine, heroin, and marijuana, was a
25 continuation of this conspiracy.

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The fact that Scanlon dropped out when he was arrested in June of 1973 didn't stop the conspiracy, and there is a presumption that those members who were in the conspiracy continued to be in that conspiracy until otherwise proved.

We don't believe that an offer of proof should be made now to demonstrate the entire Government's case and we would be reluctant to do so.

THE COURT: Are you saying that apart from the fact that the substantive counts concern forbidden substances, the evidence will be such that you could responsibly argue, and a jury could reasonably find that those unlawful instances of possession related to the same conspiratorial course of conduct as that alleged in the first count?

MR. REILLY: That is correct, your Honor.

THE COURT: That is your position?

MR. REILLY: That is our position.

THE COURT: Mr. McGuire, I don't see anything in the submissions you make that defeats that contention. It is a plausible contention. It is true that the situation respecting Mr. Scanlon, as you describe it, ought not to turn out to be helpful to the prosecution if you are accurate, but I don't see it as a compelling or compulsory

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ground for serving these charges of what after all would be similar kinds of conduct which could be proved at least in some measure by the same evidence, and I will adhere to the ruling and the cautionary understanding on which I suppose we must all proceed, and deny a motion to sever.

Call a jury panel.

Is there any other preliminary matter that we should take up?

MR. REILLY: Yes, your Honor, I would like to put on the record a statement in conformance with the Brady rule. A principal witness in this case will be Jeremiah Scanlon, and it is known that Mr. Scanlon is under indictment in the Bronx for two narcotics charges.

Mr. Scanlon, through the Legal Aid, has entered into some discussions with the Bronx District Attorney concerning the possibility of a guilty plea to one of the indictments, and the District Attorney has indicated that he would be willing to recommend that Mr. Scanlon be treated favorably by the sentencing Judge inasmuch as he is known to have cooperated with the Federal Government in this case, and to have offered to cooperate against a co-defendant in the Bronx. That co-defendant, however, pleaded guilty.

This is of some consequence, inasmuch as one of the indictments, the indictment to which he has pleaded

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United States of America

vs.

74 Cr. 225

Susan Moazezi, Akbar Moazezi,
and Veronica Hignite,
Defendants.

New York, New York.

August 22, 1974 - 10:00 A.M.

(Trial resumed.)

(In open court; jury absent.)

MR. MC GUIRE: There are a couple of things we would like to bring to your Honor's attention. First, Mr. Notaro was examined yesterday, I gather, by a physician, who wants to make some tests on him, and has asked Mr. Notaro as I gather ordered Mr. Notaro to appear for tests tomorrow morning.

I understand it is Mr. Notaro's application to start an hour later tomorrow morning for that reason.

MR. NOTARO: Your Honor, last evening I saw Dr. Gelb, who is a cardiologist in New Rochelle. I was subjected to some tests last night, and he directed I return today. I told him it would be impossible and he said the latest he would like to see me is Friday morning, and my application is that we start one hour later, your Honor.

I can be here without any problem by 11:00 o'clock.

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Mattera-direct

Q You did not see him. Did you ever get a call from him subsequent to seeing him in March or April?

A Yes, I got a call from him in, I believe it was, August of last summer. It was a call from jail. He wanted me to get in touch with his relatives to try to get bail money for him.

Q What did you tell him?

A I told him that I wouldn't do it.

Q Did he call you again?

A No.

Q Did you ever receive a telephone call from him after last summer?

A No, I have not.

MR. REILLY: No further questions.

MR. GRABER: I have no questions, your Honor.

MR. MC GUIRE: No cross-examination, your Honor.

MR. NOTARO: I have no cross-examination.

THE COURT: All right, Miss Mattera.

(Witness excused.)

MR. REILLY: Agent Lough is the next witness.

MR. MC GUIRE: Your Honor, I think we have discussed this situation before. Would this be an appropriate time for a recess?

THE COURT: Mr. Reilly, should we take our recess

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2 now although it is rather early?

3 MR. REILLY: Yes, that would be perfectly
4 all right.

5 THE COURT: Why don't you take a few minutes,
6 ladies and gentlemen. We will get to you as quickly as poss-
7 ible.

8 (The jury left the courtroom.)

9 MR. MC GUIRE: Your Honor, this witness is
10 undoubtedly going to be asked to identify, through him to move
11 into evidence a large number of exhibits which were seized
12 from the Moazezi's apartment. The seizure, your Honor will
13 recall was on January 16, 1974. The exhibits consist of
14 somewhat less than a pound of marijuana in a number of
15 plastic bags, a scale, three grams, three and three-quarters
16 grams of cocaine, and a miniscule amount of heroin, together
17 with a large strainer, some ordinary kitchen measuring
18 spoons, and what appears to be a cooking pot, a frying pan.

19 The conspiracy which has been testified to here
20 by the Government's principal and indeed only witness in
21 substantive fashion, was a conspiracy for the importation
22 on a regular basis of large quantities of cocaine, and the
23 witness also mentioned that there was talk at least of the
24 importation of large quantities of marijuana.

25 Taken most favorably to the Government, the

1 ALL-15

2 evidence of that conspiracy demonstrates that it ended no
3 later than the 9th of June, 1973, as to all participants.

4 As to Scanlon, because he had been arrested the
5 previous day. As to the others, because they absolutely
6 refused to have anything further to do with him after that
7 time.

8 There has been no evidence that the alleged
9 co-conspirator in Colombia, Augusto Trujillo Hoyos
10 did anything with respect to any of the evidence in this case
11 after some time in late May.

12 There has been no evidence, and there will be none,
13 that any of the defendants on trial here did anything with
14 respect to any of the elements of the alleged conspiracy
15 after some time in early June.

16 Simply from lapse of time, a matter of seven
17 months, the inference is compelling, it seems to me, that the
18 conspiracy ended.

19 I believe Agent Lough will testify that he made
20 some independent efforts to verify the existence of a con-
21 tinuing narcotics conspiracy, including surveillance of the
22 Moazezi's apartment, but that that surveillance did not
23 result in any evidence corroborative of Scanlon's testimony.

24 In addition to the time gap of seven months,
25 the evidence examined carefully, rather than supporting the

1 mbb-16

2 conspiracy count actually tends to cut against it. A pound
3 or less of marijuana is entirely consistent with possession
4 by the occupants of an apartment for their own use, but is
5 not, I submit, evidence in any way of a conspiracy to import
6 or distribute large quantities of marijuana, and what we
7 are talking about is multiple kilo lots.

8 So far as cocaine is concerned, three ounces --
9 I beg your pardon, three grams -- a ninth or an eighth of
10 an ounce -- of cocaine found in a lady's jewelry box is not
11 probative of a conspiracy to import cocaine in kilo and half-
12 kilo lots, which is what the witness Scanlon testified to.

13 And the witness Scanlon amplitively denied that
14 at least with respect to these defendants he had anything
15 whatever to do with heroin. He admitted, of course, that
16 he had some involvement with heroin on his own account, both
17 before and after the time of the conspiracy that has been
18 testified to, but he denied that the Moazezis had anything
19 to do with it, or of course the defendant Hignit e.

20 Now, under those circumstances -- by the way
21 there is also a firearm found in the apartment, and I assume
22 that Agent Lough will be as to introduce that. There has
23 been no connection between an antique .22 calibre pistol --

24 MR. REILLY: Mr. McGuire need not address himself
25 to that. That was merely seized. We do not intend to offer
it as evidence.

1 mbb-17

2 MR. MC GUIRE: You do not intend to offer it?

3 Fine.

4 Finally, your Honor, let me turn to the question
5 of the books that were seized in the apartment, and I assume
6 that Agent Lough will be asked to offer those as well.

7 You can't tell by my saying so, but you can tell
8 by looking at those books that they are not in any way proba-
9 tive of or supportive of the kinds of transactions that
10 Scanlon testified to.

11 Another witness yesterday testified, and that is
12 Mr. Linitz --

13 THE COURT: Let me just ask you, if they are not
14 probative of any of that, why are you worried about them?

15 MR. MC GUIRE: I am worried about them being ad-
16 mitted on the conspiracy count.

17 THE COURT: Are they probative on the conspiracy?

18 MR. MC GUIRE: No, they are not.

19 THE COURT: Why are you worried about them?

20 MR. MC GUIRE: I am arguing they should not be
21 admitted.

22 THE COURT: I know, but how will they hurt you?
23 Why do we have to waste so much time about them? What is
24 the Government going to say about them that will interest
25 the jury or hurt your client.

1 mdb-13

2 MR. MC GUIRE: The Government is going to say,
3 and it's true, that Scanlon's name appears in those books,
4 the name Jud, and the Government is going to ask the jury
5 to draw the inference that because Scanlon's name appears
6 in those books, and there are some numbers after his name,
7 that that is probative of his testimony concerning a narcotic
8 importation.

9 THE COURT: I think the Government is going to
10 be right and therefore you have got to argue something about
11 their inadmissibility rather than -- just a second.

12 MR. MC GUIRE: I am sorry.

13 THE COURT: -- rather than telling me they are
14 not probative of anything and then in the next breath tell
15 me they are damaging.

16 MR. MC GUIRE: Well, your Honor I think you missed
17 my point, most respectfully.

18 THE COURT: I think I did too.

19 MR. MC GUIRE: The books that will be offered
20 have numbers in them which would be probative of what the
21 witness Linitz testified to yesterday, which was, if your
22 Honor will recall, that on a number of occasions he drove
23 Scanlon to the Moazezi's apartment, and that Scanlon returned
24 from that apartment with small amounts of marijuana.

25 In other words, not that Scanlon was a seller of

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cocaine to the Moazezis, but that in a small-time way, the Moazezis were sellers of marijuana to Scanlon.

For that reason, your Honor, I submit that the books are not admissible on the conspiracy count, regardless of their probative force with respect to the substantive or possessor counts in the indictment.

Now this leads me to the proposition that I advanced to the Court or had been advanced to the Court on numerous occasions before. That is that these two groups of charges don't belong together in the same trial, and that the Government has not supplied the connective tissue which it said it would supply to support the joinder of the substantive or possessor offenses with the conspiracy count, and we would, either at this time or at an appropriate time, after further proceedings, renew our motion for a severance and mistrial of the substantive counts.

THE COURT: Does any other defense counsel wish to be heard on what Mr. McGuire has argued so fully?

MR. NOTARO: Your Honor, of course I adopt the arguments that Mr. McGuire set forth and would add only that I made a motion for a severance of the defendant as well as the severance of the counts on Monday morning, and I won't repeat the basis for it.

I am sure your Honor is aware of it. And I

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2 think your Honor stated to me that if the Government had
3 failed to establish the link between the evidence that is
4 in question and the defendant Hignite, they should renew
5 my motion for a severance and you will reconsider it at that
6 time.

7 This is what I am doing at this time, your Honor.
8 I think the Government has failed to make that connection
9 when we consider that Miss Hignite is only named in the
10 conspiracy count, she is not named in any substantive count,
11 and the only testimony regarding her involvement was
12 from the witness Scanlon and that was a very sketchy bit of
13 testimony under any circumstances. He wasn't quite certain
14 of the dates or when she was there or what was said, and I
15 think that on that bit of sketchy evidence I think the
16 Government has failed in their burden to make that connection,
17 your Honor, and I think the introduction against her would be
18 highly prejudicial.

19 THE COURT: Mr. Graber?

20 MR. GRABER: Your Honor, I would just say that
21 I join with counsel in their arguments, and for the record
22 just renew my original arguments made for the severance,
23 that I had made earlier.

24 THE COURT: Mr. Notaro, the probability is I am
25 going to deny the motions that are now being made, but in

1 mbb-21

2 your case, the case of Miss Hignite, it seems to me likely
3 that I would view favorably any application for limiting
4 instructions expecting at least some of the evidence
5 seized in the course of that arrest, and then search in
6 January of this year.

7 One of the things that occurs to me quickly was
8 the small amount of heroin. I would think, subject to what-
9 ever Mr. Reilly might tell me to the contrary, that I would
10 look favorably on the idea of giving an instruction that
11 that may not be considered against Miss Hignite, but only
12 against the two defendants named in the substantive counts.

13 That may be true of other things among these
14 articles, and I invite you to request such limiting instruc-
15 tions as we do through them, having in mind that I don't
16 want to invite you to make motions that I am disposed to
17 deny, so let me give you the other side of it. Just offhand
18 but then you have to be guided, as her lawyer, I would think
19 if you made such a motion with respect to that scale, if the
20 scale, and if memory serves me and it may be true, looking-
21 like something that was described in Mr. Scanlon's testimony,
22 or could be thought to look like something described in his
23 testimony, then if you made that motion with respect to the
24 scale, I would deny it.

25 I give you those observations without binding either

1 of us, but for your guidance.

2 Let me also say that if you want to move now,
3 as you already have, to have it all excluded as against Miss
4 Hignite, that I believe will amply preserve your record in
5 her favor.
6

7 You understand what I mean?

8 MR. NOTARO: Yes.

9 THE COURT: So you don't have to move with respect
10 to each item if it is your hunch that I am just going to deny
11 it before the jury.

12 MR. NOTARY: Yes, your Honor, my previous posi-
13 tion was to move on each item as it is introduced. The
14 heroin, on the basis that there was no allegation whatsoever
15 that heroin was one of the items that was thought --

16 THE COURT: I understand. That one you have a
17 good case on. You may have a good case on other things,
18 but to preserve your record and to make life as easy for you
19 as possible, quite apart from your health, but just to keep
20 moving --

21 MR. NOTARO: Thank you.

22 THE COURT: -- let me say that your motion is
23 deemed to have been made with respect to all these items.

24 MR. NOTARO: Yes, sir.

25 THE COURT: And at this time I am denying it with

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2 respect to all these items and I am denying any limiting
3 instruction with respect to all of them except such par-
4 ticular ones as I hereafter give limiting instruction on,
5 and in that light, I am suggesting the convenient thing
6 for you to do is to get up for each item that you think you
7 have a chance on.

8 MR. NOTARO: Yes, your Honor.

9 THE COURT: And make your motion and I will either
10 grant it or deny it at that point.

11 Do you follow?

12 MR. NOTARO: Yes, I certainly do, your Honor.

13 THE COURT: All right. Let's see where we stand
14 with Mr. Reilly.

15 Mr. Reilly, speaking only of the heroin, do you
16 agree or disagree that that should not be received against
17 Miss Hignite?

18 MR. REILLY: We disagree, your Honor, for these
19 reasons:

20 The testimony has established that Veronica
21 Hignite was part of the conspiracy to import and to distribute
22 drugs. There was marijuana, there was cocaine, and now
23 there was heroin that was found in the apartment. The
24 heroin is not of the sort that somebody is going to take
25 for one, although the quantity is small, it wasn't going to

1 MBB-24

2 evaporate overnight. There will be testimony by the chemist
3 that the quality and purity of this was extremely high,
4 94 per cent; not the type of thing that any individual is
5 just going to take for his own use.

6 It was obviously meant for cutting and distribu-
7 tion. It probably would be lethal. It therefore falls
8 in the category of a sample.

9 Now if Miss Hignite is part of this conspiracy,
10 she is going to be responsible for that heroin, as well
11 as anything else, and we say that when you take a look at
12 the books and records which have been alluded to, and you
13 find Ronnie's name in there over and over again, at the
14 time that these documents were seized in January of 1974, that
15 she is responsible not only for the cocaine and marijuana
16 that was found in the apartment, she is also responsible
17 for the heroin.

18 THE COURT: Well, I think it is a plausible argument
19 but correct me if I am wrong, it seems to me that is the
20 first reference we have had to heroin.

21 MR. REILLY: That is correct.

22 THE COURT: I don't think it is enough. I
23 don't think the fact that you may conspire with people to
24 deal in marijuana and cocaine involves you in a conspiracy
25 to deal in any narcotic or illicit substance that comes along

mbb-25

I would take the same view as to LSD or stolen automobiles. That is a rough judgment, but it seems to me to be a fair one.

Now I don't know if there are any other items with respect to which I will take the same view, but I leave that to you, Mr. Notaro, with such guidance as we have been able to give you.

MR. NOTARO: Yes.

THE COURT: For the rest, let me just say that I find by a preponderance of the evidence that the Government thus far has shown a conspiracy which predated the arrival of Scanlon on the scene. Augusto does not get born when Mr. Scanlon comes from Ireland. The evidence strongly supports an inference up to now that the Moazezis had been in business with him before Scanlon.

Scanlon surely does leave the conspiracy involuntarily when he is incarcerated; but there is no evidence that any of the other people got out of it, or that it terminated. It is sort of elementary doctrine that the personnel of a conspiracy may change, and Scanlon's departure for prison changed it in respect of eliminating him, but it does not seem to me to overcome the presumption up to now that the conspiracy in progress up to that point continued thereafter, and so the motion is, subject to the things I have talked

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

CHUMI MOAZZEI, NARAJA MOAZZEI,
et al.,

Defendants.

NOTICE OF MOTION

Indictment No. 74 CR 225

SIR:

PLEASE TAKE NOTICE, that upon the annexed affirmation of
HERMAN I. GRABER, the attorney for the defendants MOAZZEI herein and
upon the memorandum of law submitted in support of the motion herein
and upon all the proceedings heretofore had herein, a motion will
be made in the United States District Court, for the Southern Dis-
trict of New York, at the United States Courthouse, Foley Square,
New York, New York on the 3rd day of June, 1974, at 10:00 o'clock in
the forenoon or as soon thereafter as counsel can be heard for an
order granting reconsideration by this Court of its denial of a
motion to suppress all evidence filed on April 15, 1974, and for a
hearing on all factual issues raised by this motion.

Yours, etc.,

SIEGEL & GRABER
401 Broadway, Suite 1808
New York, New York 10013
(212) 962-1294

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

H 10

UNITED STATES OF AMERICA

-against-

AFFIRMATION

US v. MOAZZEZI, ARAR MOAZZEZI,
et al.,

Indictment NO. 74 CR 225

Defendants.

HERMAN I. GRABER, an attorney duly admitted to practice in the Courts of the State of New York, hereby affirms, under penalty of perjury, that the following statements are true:

A motion to suppress filed by this office on April 12, 1974, was denied by the Court on May 7, 1974.

Defendant hereby moves for reconsideration by this Court of its denial without a hearing of a motion to suppress all evidence seized on January 10, 1974, and for permission to raise this motion prior to trial.

After a hearing before the Court on March 19, 1974, counsel was under the mistaken impression that the Court desired all pre-trial motions, discovery as well as suppression motions, prior to April 15, 1974.

With ARAR MOAZZEZI in Iran at the time and without the information requested by our motion for a bill of particulars, filed on April 12, 1974, this office was not in a position to raise all possible issues concerning a motion to suppress and we felt that raising issues in piecemeal would not have been desired by the Court. We thus only raised factual issues that SUSAN MOAZZEZI was in a position to swear to in her affidavit.

The motion was thus drafted without sufficient information in order to meet what we felt was the Court's wishes.

The Government would not be prejudiced by reconsideration of this motion and then a hearing on factual issues raised. No notice of readiness has been received nor has a trial date yet

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been set. The Government in its Bill of Particulars stated in response to particular 7:

7. The motion to suppress may be resolved in the usual course at a hearing immediately prior to trial.

Counsel here raises issues ^{he feels} worthy of the Court's consideration, and we respectfully request it.

Counsel here raises issues worthy of the Court's consideration, and we respectfully request it.

arguing, inter alia:

1. The arrest warrant is insufficient on its face,
2. There was not probable cause for believing the existence of the grounds on which the arrest warrant and search warrant was issued, and
3. Factual issues stated in the supporting affidavits for the arrest and search warrants are not true.

Here attached are copies of the complaint upon which the arrest warrant was based, the search warrant and its supporting affidavit. Also attached are the passports of the defendants which are relevant to issue, no. 3 above.

We are also now preparing and will continue to prepare with the Court's permission, another brief, raising the 4th Amendment issues engendered by the Government's response, received the week of May 6, 1974, to our bill of particulars.

We respectfully beg the Court's reconsideration of this motion.

RECEIVED

United States Magistrate, Southern District of New York.

74-34

AGRICULTURAL, INDUSTRIAL, and : 21 U.S.C. Sections
JAMES EARL RAY, and : 812, 814(a)(1),
: 812, 814(1)(A) and 816.
Defendants; and
SOUTHERN REGION OF THE FBI, vs. :
: 100-441101-1000

FREDERICK S. LOUGH, being duly sworn deposes and says that he is a Special Agent with the Drug Enforcement Administration, and alleges and charges as follows:

1. From on or about the 1st day of September, 1972 and continuously thereafter up to and including the date of the filing of this complaint, in the Southern District of New York, AGBAR MOAZEZI, SUSAN MOAZEZI and JAKE IOE a/a/a "Romina", the defendants and Jeremiah Scanlon named herein as a co-conspirator and not as a defendant, and others known and unknown, unlawfully, wilfully and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, wilfully and knowingly would distribute and possess with intent to distribute Schedules I and II narcotic drug controlled substances the exact amount thereof being unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

3. It was further a part of said conspiracy that the said defendants would unlawfully, wilfully and knowingly import into the customs territory of the United States from a place outside thereof, Schedule I and II narcotic drug controlled substances in violation of Sections 952(a), 960(a) (1) and 960(b)(1) of Title 21, United States Code.

1. The defendant in the said conspiracy and to effect the objects thereof, on or about the 18th day of December, 1972, in the Southern District of New York, conspired with and aided and abetted the defendant containing approximately 600 grams of cocaine to defendants AGBAR MOAZEZI and SUSAN MOAZEZI at 315 West 102nd Street, New York, N.Y.

The sources of defendant's information and the grounds of his belief are investigations conducted by him in the course of his official duties, including:

CO-CONSPIRATOR

1. Sworn testimony before a Federal Grand Jury that defendants LAMAR MOHAMMAD, SUSAN MOHAMMAD, JAMES BOB a/k/a "Ronnie" and co-conspirator Jeremiah Scanlon and others known and unknown agreed to import cocaine into the United States from Colombia, South America and thereafter did import approximately 600 grams on or about December 18, 1972.

CO-CONSPIRATOR

2. Verification of information received from a confidential informant tending to corroborate the above testimony. (audio tapes and FBI Report Confidential) (Testified to)

WHEREFORE, defendant prays that a warrant may issue for the apprehension of the above-named defendants and that they may be arrested and imprisoned, or bailed, as the case may be.

Subscribed and sworn to before me this 10th day of January, 1974.

10 6th day of January, 1974.

It was part of said conspiracy that the said defendants were to be arrested and imprisoned, or bailed, as the case may be.

It was part of said conspiracy that the said defendants were to be arrested and imprisoned, or bailed, as the case may be.

To: James Earl Ray
 Affidavit having been made before me by James Earl Ray

that he has reason to believe that on the premises known as

1000 1/2 North 1st Street
Chicago, Illinois

In the County of Cook State of Illinois
 there is now being concealed certain property, namely: one (1) Colt .45 caliber
revolver, one (1) Smith & Wesson .38 caliber
revolver, one (1) Smith & Wesson .38 caliber

which are the property of the United States
Government

and as I am satisfied that there is probable cause to believe that the property so
 concealed on the premises above described and that the foregoing proba-
 bility of the search warrant exist.

*You are hereby commanded to search forthwith the premises named 1000 1/2 North 1st Street
 serving this warrant and making the search at any time in the day or night and to take
 four (4) copies of this warrant and a copy of the return and to deliver one copy of the
 a written inventory of the property seized to the person to whom the return is made within
 within ten days of the date of the return required to be made.*

Dated this 17 day of January, 1966

1. The first step in the process of the investigation is the identification of the problem. This is done by the investigator who is responsible for the study. The next step is to collect data. This is done by the investigator who is responsible for the study. The next step is to analyze the data. This is done by the investigator who is responsible for the study. The next step is to interpret the results. This is done by the investigator who is responsible for the study. The next step is to draw conclusions. This is done by the investigator who is responsible for the study. The next step is to report the results. This is done by the investigator who is responsible for the study. The next step is to discuss the results. This is done by the investigator who is responsible for the study. The next step is to evaluate the results. This is done by the investigator who is responsible for the study. The next step is to conclude the study. This is done by the investigator who is responsible for the study.

BEFORE COL. GEORGE J. BROWN,
Deputy of Secretary.

The undersigned being duly sworn deposes and says:

315 West 101st Street,
New York 25, N.Y.
New York, New York

there is now being concealed certain property, namely: unpublished
copyright and literary patent writing.

And that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows:

Frederick S. Engel
Signature of Agent.

The Federal Rules of Criminal Procedure provides: "The warrant shall direct that it be served on the defendant, or if his name is unknown, on the person or persons who the officer believes to be in possession or control of the property from the person or persons to whom it is to be served." The warrant may also direct that it be served on any person who the officer believes to be in possession or control of the property.

FOUR

That I am a Special Agent with the Federal Bureau of Investigation.

That on January 16, 1975, I, [redacted], and other agents entered the premises 545 West 141st Street, A.D. 70, New York, New York, for the purpose of conducting a search and seizure of the premises for a quantity of cocaine, as alleged by the United States Magistrate for the Southern District of New York in a Complaint charging the defendant with violating the Federal Narcotic Laws.

That upon entering the premises to place the search warrant, I observed a quantity of a white powder on a living room table near the dining. Your deponent also observed in plain view on the same table a quantity of marijuana in a plastic bag. Your deponent has observed marijuana on many occasions in the past, has handled it and has had attended courses dealing with marijuana as a special agent. In your deponent's opinion, the substance in the plastic bag was marijuana.

Directly above the table, in plain view, your deponent observed several plastic bags containing a substance similar to the substance in the bag on the table.

On the same table your deponent observed a box of plastic bags similar to the plastic bag containing the substance on the table. Your deponent was also able to see a table lamp resting on a shelf in an adjoining room. Your deponent states that plastic bags and scales are common narcotic paraphernalia used by persons purchasing narcotics.

Your deponent believes upon observing the white powdery substance on the table and the presence of the bags on the table that the defendant had recently completed the loading of a quantity of cocaine which your deponent believes is still secreted within the premises.

Your deponent has been advised by a Special United States Attorney that a writ of habeas corpus was issued for a Federal Grand Jury to return a indictment against a quantity of cocaine to the defendant's apartment. Your deponent has been advised that the defendant is not a citizen of the United States. The defendant is not a citizen of the United States, however, such of the information as such as the date of birth, date of entry, date of arrival in the United States, the place of birth, and a description of them has been furnished by your deponent.]

Frank J. [redacted]
 11-1-75

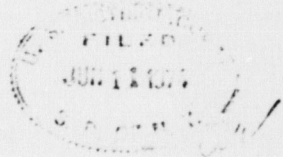
[Handwritten signature]

[Handwritten signature]

1,11:ra
74-0230

A-97

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----x
UNITED STATES OF AMERICA :

-v- :

SUSAN MOAZEZI, et al., :

Defendants. :

AFFIDAVIT

74 Cr. 225(MEF)

-----x
STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

DANIEL H. MURPHY, II, being duly sworn, deposes
and says:


1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York.
2. I make this affidavit in response to the affidavits of the defendants Moazezi and of one Jacques Charles submitted in support of the defense motion to suppress certain evidence.
3. A complaint was filed herein on January 9, 1974, charging the Moazezis and others with conspiring to import narcotic drugs into the United States. The complaint is attached as Exhibit A to this affidavit. An arrest warrant was issued and the defendants Moazezi were arrested in their apartment on January 16, 1974. In the course of that arrest, the arresting agent observed narcotics, marijuana, and various paraphernalia in plain view in the

12

Moazezi apartment. A search warrant was obtained based on those observations and other material. The affidavit of the arresting officer is attached hereto as Exhibit B. Heroin, cocaine, marihuana and certain related paraphernalia were seized pursuant to the search warrant. The defendants Moazezi now move to suppress the seized material. The Government opposes the defense motion.

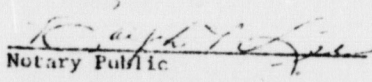
4. The defense affidavits raise two factual issues: whether the Moazezis ever travelled to South America and whether the materials observed by the arresting agent on the arrest were in plain view. The first is irrelevant since the Government has not alleged that the Moazezis were the members of the conspiracy who travelled to South America. The second is a question of fact which may better await the suppression hearing now scheduled for July 29, 1974, immediately before the trial of this matter.

WHEREFORE, the renewed motion of the defendants Moazezi should be denied subject to renewal at trial.


DANIEL H. HOWARD, JR.
Assistant United States Attorney

Sworn to before me this

10th day of June, 1974


Notary Public

47
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK X

UNITED STATES OF AMERICA

-AGAINST-

CHAL MOAZEZI, AKBAR MOAZEZI,
ET AL.,

REPLY TO GOVERNMENT'S AFFIDAVIT
IN OPPOSITION TO DEFENDANTS'
MOTION TO SUPPRESS

DEFENDANTS.

ROBERT L. NEWICK, AN ATTORNEY DULY ADMITTED TO PRACTICE
IN THE COURTS OF THE STATE OF NEW YORK, HEREBY AFFIRMS, PURSUANT TO
CPLR RULE 2106, AND UNDER PENALTY OF PERJURY, THAT THE FOLLOWING
STATEMENTS ARE TRUE:

THE GOVERNMENT IN ITS AFFIDAVIT TO OUR MOTION TO SUPPRESS
STATES:

THE DEFENSE AFFIDAVITS RAISE TWO FACTUAL
ISSUE: WHETHER THE MOAZEZIS EVER TRA-
VELLED TO SOUTH AMERICA AND WHETHER THE
MATERIALS OBSERVED BY THE ARRESTING AGENT
ON THE ARREST WERE IN PLAIN VIEW. THE
FIRST IS IRRELEVANT SINCE THE GOVERNMENT
HAS NOT ALLEGED THAT THE MOAZEZIS WERE
THE MEMBERS OF THE CONSPIRACY WHO TRA-
VELLED TO SOUTH AMERICA.

THIS INFORMATION IS OF COURSE RELEVANT SINCE IT IS GIVEN IN
THE COMPLAINT UNDERLYING THE ARREST WARRANT AS THE GOVERNMENT'S
CORROBORATION FOR THE INFORMER'S INFORMATION. THE FACT THAT THE
CRIMINAL ACTIVITY OF CO-CONSPIRATORS, OTHER THAN THE MOAZEZIS, WAS
CORROBORATED BY INDEPENDENT POLICE INVESTIGATION BEARS NO APPARENT
RELEVANCE TO WHETHER THERE WAS PROBABLE CAUSE FOR THE ARREST OF THE
DEFENDANTS MOAZEZI. WE ARE CONCERNED HERE, OF COURSE, WITH WHETHER
THERE WAS PROBABLE CAUSE THAT THE DEFENDANTS MOAZEZI HAD COMMITTED
OR WERE COMMITTING AN OFFENSE.

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A981

THE COMPLAINT UNDERLYING THE ARREST WARRANT NOW FINDS AS ITS ONLY CONNECTION WITH THE DEFENDANTS, THE INFORMATION OBTAINED IN 1974, FROM AN INFORMER OF ADMITTEDLY NOT PAST PROVEN RELIABILITY, THAT HE, BACK IN DECEMBER, 1972, HAD AGREED WITH THE DEFENDANTS TO IMPORT COCAINE. THE FACT THAT HIS CRIMINAL ACTIVITY MAY HAVE BEEN CORROBORATED BY POLICE INVESTIGATION DOES NOT ENHANCE THE RELIABILITY OF HIS INFORMATION. IN THE ABSENCE OF PROBABLE CAUSE FOR AN ARREST AND SEARCH, THE WORK OF THE UNITED STATES SUPREME COURT IN WHITELY V. MADDEN OF WYOMING DEPARTMENT, 401 US 560, 567, 91 S.Ct. 1031, 28 L.Ed. 2D 306 (1971) ARE HERE APPROPRIATE:

"THE RECORD IS DEVOID OF ANY INFORMATION AT ANY STAGE OF THE PROCEEDING FROM THE TIME OF THE (CRIME) TO THE EVENT OF THE ARREST AND SEARCH THAT WOULD SUPPORT EITHER THE RELIABILITY OF THE INFORMANT OR THE INFORMANT'S CONCLUSION THAT THESE MEN WERE CONNECTED WITH THE CRIME"

EXCEPT FOR CORROBORATING ^{THE} DESCRIPTION AND ADDRESS OF THE DEFENDANTS (THIS CORROBORATION IS STATED IN THE SEARCH WARRANT AFFIDAVIT) THE RECORD HERE IS TOTALLY DEVOID OF ANY INDEPENDENT CORROBORATIVE INVESTIGATION BY THE FEDERAL OFFICERS PRIOR TO THE ARREST. U.S. V. CANISEO, 470 F.2D 1224, 1230 (1972). WE THEREFORE REITERATE OUR PRIOR ARGUMENTS IN BEHALF OF THE DEFENDANTS, AND PERMANENTLY OUR MOTION FOR THE SUPPRESSION OF THE SEIZED MATERIAL.

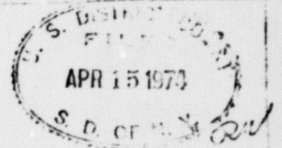
WHEREFORE, THE ARREST OF THE DEFENDANTS MOAZEZI WAS NOT BASED ON PROBABLE CAUSE AND THE FRUITS OF THE ARREST, ALL EVIDENCE SEIZED IN THE COURSE OF THE ARREST, THE SEARCH WARRANT BASED ON OBSERVATIONS MADE DURING THE ARREST AND ALL EVIDENCE SEIZED PURSUANT TO THAT SEARCH WARRANT MUST BE SUPPRESSED.

DATED: NEW YORK, NEW YORK
JUNE 19, 1974

ROBERT L. HERRICK

A-99

MEMO ENDORSED
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA .

-against-

NOTICE OF MOTION

SUSAN MOAZEZI, AKBAR MOAZEZI, et al.,
Defendants.

Indictment No. 74 CR 67

SIR:

PLEASE TAKE NOTICE, that upon the annexed affirmation of HERMAN I. GRABER, ESQ., dated the 14th day of April, 1974, and upon all papers and proceedings in this case, the defendants, SUSAN MOAZEZI and AKBAR MOAZEZI, will move this Court, on the 15th day of May, 1974, at 9:30 o'clock in the forenoon or as soon thereafter as counsel can be heard, for:

I. An order pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure directing the Government to furnish the following Bill of Particulars to the defendants and their counsel, as to each defendant, each count of the indictment, and as to all overt acts:

1. Whether the co-conspirator referred to in first the arrest warrant affidavit and then in the search warrant affidavit is the same man?

2. The date that the co-conspirator referred to in "1", whose Grand Jury testimony is given in the affidavits as the basis for probable cause, gave that Grand Jury testimony before a Federal Grand Jury?

3. The date the Grand Jury Proceeding in which the co-conspirator allegedly gave the testimony supporting the affidavit for the arrest and the search warrant terminated?

4. Whether the Grand Jury referred to in questions "2" and "3" voted on whether to indict or not, and if so the date of the

A-100

5. If the Grand Jury referred to in questions "2", "3" and "4" did not vote to indict, state the Grand Jury proceedings which indicted the defendants, 74 Cr. 87, the original indictment, commenced and the date that Grand Jury voted to indict.

6. The date the original indictment, 74 CR 87, was signed by the United States Attorney and the date it was filed.

7. The date the Grand Jury proceedings which voted the superseding indictment, 74 CRIM 2 commenced the date it voted the indictment, the date it was signed by the United States Attorney, and the date it was filed.

8. The approximate date the co-conspirator(s) referred to in the affidavit for the arrest and search warrant began working for the Government.

9. Whether Jeremiah Scanlon is the co-conspirator whose testimony was referred to in the affidavit for the arrest and search warrant.

10. Whether the evidence supporting the two additional overt acts added in the superseding indictment was from the testimony of the same witness who testified as to the original six overt acts of the original indictment, or evidence independent of the co-conspirator testimony supports the additional two counts of the superseding indictment.

11. Whether the co-conspirator referred to in the affidavits ever attempted to contact or ever communicated with the defendants herein since he began cooperating with the Government and if so, the dates and the results.

12. State the exact date, time and location where it is alleged that the defendants entered in to the conspiracy alleged in Count 1.

13. State the names of the person or persons present when any of the overt acts in the furtherance of the conspiracy allegedly occurred, whether indicted or not.

14. Whether any individual involved in the conspiracy, whether named or not in the indictment, was, prior to or since the arrest, acting in behalf of the federal or state governments. If so, his name and whether he will be testifying at the trial.

15. A general description of any alleged conduct by the defendants which shows or from which could be inferred (1) that the defendants were members of the alleged conspiracy, and (2) that the defendants had knowledge of any of the conspiracies' alleged illegal purposes.

16. State whether any evidence would be introduced at trial concerning any overt act not stated in the indictment, and if so, a general description of the overt act and state the date, time and place of its occurrence.

17. State whether it is alleged that the defendants made any statements to a police officer or agent of the prosecution, either prior to or after arrest.

18. Description of all items seized from the defendants' persons or apartment at the time of their arrest or subsequent thereto, and the exact time, exact location, and persons present when said items were seized.

19. The exact aggregate weight of the narcotic drugs referred to in the first count of the indictment and its overt act.

20. State the exact date, time and location where it is alleged that the defendants "did distribute and possess with intent to distribute a Schedule II narcotic drug" as charged in the last three counts of the indictment.

21. State the names of the person or persons present when it is alleged that the offenses charged in the last three counts took place.

22. State the exact aggregate weight of the narcotics allegedly possessed in the last three counts of the indictment.

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II. An order directing the Government to disclose all evidence in its possession, custody or control which may tend to exculpate the defendants or to establish their innocence of the crime charged or to establish any defense thereto. The Government should include here the names and addresses of all individuals present

3. All written or recorded statements or confessions made by the defendants, or copies thereof, including any pre-arrest oral statements later reduced to writing.

24. All books, records, papers, documents, memoranda, tangible objects or copies of any thereof, including, but not limited to, any court orders authorizing search warrants and/or electronic surveillance, and applications made for such warrants and surveillance, relevant to the investigation or prosecution of this case, which are within the possession, custody or control of a law enforcement agency.

25. The results or reports of any physical or mental examinations, scientific tests or experiments involved in or related to the instant case.

26. The Grand Jury testimony of all witnesses before the Grand Jury that returned this indictment whom the Government plans to call at trial.

27. A copy of prior convictions of the defendants, if any.

28. A copy of prior convictions and pending charges against all persons whom the Government intends to call as witnesses.

29. Description of any crimes committed by Government's witnesses which have not been formally charged against them.

30. The personnel folders of any law enforcement officials whom the Government intends to call as witnesses.

31. The instructions to the Grand Jury that returned this indictment by the Assistant U.S. Attorney.

III. An order directing the Government to disclose all evidence in its possession, custody or control which may tend to exculpate the defendants or to establish their innocence of the crime charged or to establish any defense thereto. The Government should include here the names and addresses of all individuals present

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With the exception of the items listed above, the Court has no opinion as to whether or not such items should be returned to the defendant.

An order granting the defendant's demands, in whole or in part, is hereby denied. The Court reserves the right to make such further motions as are proper and upon the United States Attorney's response and the Court's decision as to those motions, and any other motions based upon future developments in the case, including motions to suppress any evidence seized.

Dated: New York, New York
April 11, 1974

Yours, etc.,

SINGEL & SPADY
ATTORNEYS AT LAW
401 BROADWAY, SUITE 1000
New York, New York 10013
(212) 362-1235

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DEM, II:ccc

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

-v- :

AFFIDAVIT

SUSAN HOAZEZI, :

S 74 Crim. 225 (MEF)

AKBAR HOAZEZI, :

VERONICA HIGNITE, a/k/a "Ronnie", :

and AUGUSTO TRUJILLO-MOTOS, :

Defendants. :

STATE OF NEW YORK)

COUNTY OF NEW YORK)

ss.:

SOUTHERN DISTRICT OF NEW YORK)

DANIEL H. MURPHY, II, being duly sworn, deposes

and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York. I am in charge of the prosecution of the above matter.

2. I make this affidavit in response to the divers pre-trial motions submitted by defense counsel in the above matter. The formal papers submitted by the defense were filed without any attempt to resolve the issues short of intervention by the Court nor was the Government even made aware of these demands until papers were filed.

3. The Hignite papers make certain requests under the aegis of Rule 16. The Government has turned over all written or recorded statements or confessions by the defendant Hignite within the meaning of Rule 16. There are no books, records or other papers seized from the defendant Hignite nor are there transcribed conversations or photographs. As to the request for the details of the Government's evidence,

DHS, II:

list of witnesses, and material tending to show innocence of this defendant; material in the first two categories will be turned over pursuant to 18 U.S.C. § 3500 on the evening before the trial day on which the witnesses to whom such statements pertain are expected to testify. The Government at present knows of no evidence tending to show the innocence of defendant Hignite nor of witnesses with knowledge of the subject matter of the indictment who will remain uncalled by the Government.

4. On other matters our office knows of no wiretapping of defendant Hignite nor reasons why electronic surveillance of her might have been authorized. 3500 material is kept in this and other cases pursuant to the regular policy of the agency involved. The Scanlon material will be turned over pursuant to 18 U.S.C. § 3500.

5. As to the request by Hignite for a bill of particulars:

- (a) None
- (b),(c) See Indictment
- (d) See Counts 2-4
- (e) The defendant Hignite directed the ^{distribution of drugs from} smuggling operation. Various couriers implemented it. The defendant Monzezi financed it. The defendant Trujillo-Hoyos was the source in Colombia for the cocaine.
- (f) Yes
- (g) See Overt Act 3.
- (h) The Monzezi apartment, 315 West 102nd Street New York, New York.
- (i) See Overt Act 6.
- (j) The Monzezi apartment, 315 West 102nd Street, New York, New York.

See Rtr
from R. H. G.
7/24/74

MM,II:ccc

(k) Yes. The details are unknown at present.

6. On the Hignite and Moazezi requests for a severance, the Government alleges and will prove an ongoing smuggling and distributing operation among the defendants involving and progressing through marijuana, cocaine and heroin which operation continued from the early part of October, 1972, at the least up through January 16, 1974, and probably beyond and to March 6, 1974.

7. The Moazezi motion to suppress may be resolved in the usual course at a hearing immediately prior to trial.

8. As to the Moazezi request for a bill of particulars:

1. Yes.
2. January 8, 1974.
3. January 8, 1974 .
4. January 25, 1974.
6. January 25, 1974.
7. March 5, 6, 1974.
8. December 1973.
9. Yes.
10. Yes.
11. Not to the Government's knowledge.
12. Unknown.
13. See Indictment
14. No.
15. See Indictment
16. See Indictment.
17. Yes.
18. The Government refers to the return on the search warrant.

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Encl. 111ccc

19. Indictment.
20. The Indictment.
21. The Indictment.
22. The Indictment.

9. The Government will furnish the material requested in paragraphs 20, 21, 22, 27 of the Request prior to the convenience of the Mezzari defense counsel. Material requested in paragraphs 20, 21 will be furnished pursuant to 18 U.S.C. § 3500. As to paragraph 29, see the Indictment. The answer to paragraph 29 is no; to paragraph 31, there was none recorded.

10. The Government has no material tending to show the innocence of the defendants Mezzari. All information will be turned over pursuant to 18 U.S.C. § 3500.

13/
DANIEL H. MURPHY, II
Assistant United States Attorney

Signed to before me this

3rd day of May, 1974

Notary Public

Notary Public

TO:

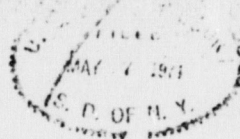
SINCE & CHAMBER, ESQ.
Attorney for Defendant Mezzari
401 Broadway
New York, New York 10013

JACOB A. MEZZARI
Attorney for Defendant Mezzari
401 Broadway
New York, New York 10013

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A-108

U.S. v. Monzezi, et al., 74 Cr. 225
Re: Bill of Particulars



Endorsement

The Government has consented ^{to} most of the items sought by this motion, and most have been supplied already. The things not given on consent need not be supplied, and in those respects the motion is denied. So ordered.

MEF

Dated: New York, New York
May 6, 1974

Martin E. Farnham
U.S.D.J.

RECEIVED ENDORSED

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A 109

UNITED STATES DISTRICT COURT
DISTRICT OF NEW YORK

JUN 24 1963 (110)
U. S. DISTRICT COURT
DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA,
-against-
SUSAN MORSE, ALGER MORSE,
et al.,
Defendants.
----- X

74 Cr. 225
MEMORANDUM

RECEIVED
JUN 24 1963
U. S. DISTRICT COURT
DISTRICT OF NEW YORK

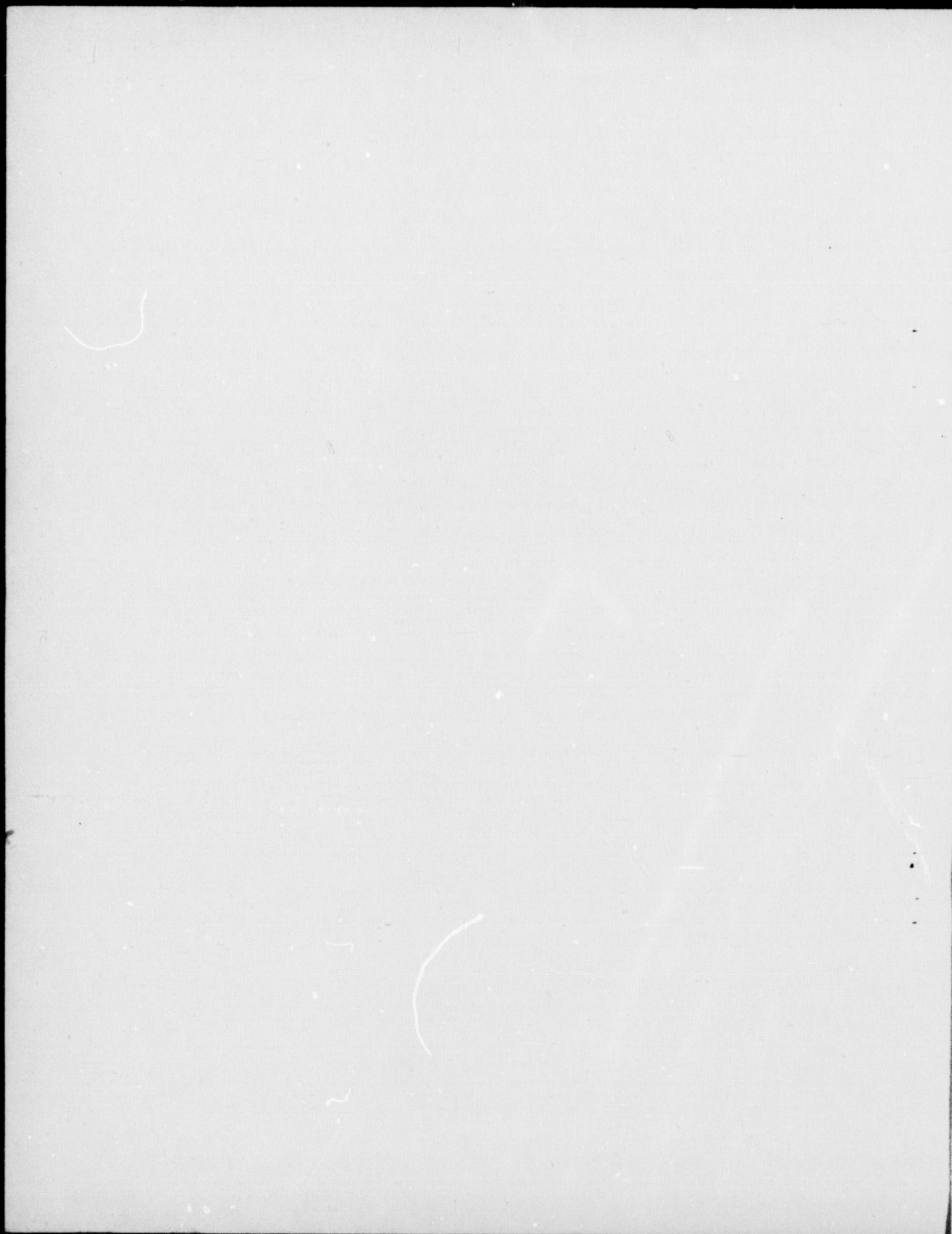
FRANKEL, D.J.

As reflected in a reply affidavit for defendants, all soon agreed that the informant whose intelligence underlay the arrest warrant was a co-conspirator. His report was not a casual one. It was embodied in sworn testimony before the grand jury, which the issuing Magistrate could have demanded if his contact with the complaining officer and the latter's affidavit were not deemed by him to be sufficient.

A single witness under oath may be enough to convict, let alone show probable cause. Given that and the rest of the document, the complaint was sufficient and the arrest valid.

This leaves, as the government acknowledges, a

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dispute as to whether the "plain view" assertions in the affidavit supporting the search warrant were false. The court accepts the government's contrary suggestion that the evidence on this be heard on the first day set for the trial herein. We will begin therefore, at 10 a.m. on July 29, 1974, with the hearing of such evidence.

It follows that a final ruling on the motion to suppress must be postponed until the completion of that evidentiary hearing.

Dated: New York, New York
June 21, 1974

Maurice E. Frankel
U.S.D.J.